S. HRG. 101-217

NUCLEAR REGULATION REORGANIZATION AND REFORM ACT OF 1989

HEARING

BEFORE THE

SUBCOMMITTEE ON NUCLEAR REGULATION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 946

A BILL TO REORGANIZE THE FUNCTIONS OF THE NUCLEAR REGULATORY COMMISSION TO PROMOTE MORE EFFECTIVE REGULATION OF ATOMIC ENERGY FOR PEACEFUL PURPOSES

JULY 19, 1989

Printed for the use of the
Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE

21-568 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S321-34

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NUCLEAR REGULATION REORGANIZATION AND REFORM ACT OF 1989

WEDNESDAY, JULY 19, 1989

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON NUCLEAR REGULATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room 406, Dirksen Senate Office Building, Hon. John B. Breaux (chairman of the subcommittee) presiding.

Present: Senators Breaux, Simpson, Reid, Moynihan, and Symms.

OPENING STATEMENT OF HON. JOHN B. BREAUX, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator BREAUX. The subcommittee will please come to order.

This morning the Subcommittee on Nuclear Regulation is meeting to hear testimony regarding the bill that Senator Simpson, Senator Biden, and myself have introduced to reorganize the Nuclear Regulatory Commission. The bill is virtually identical to the single-administrator bill that passed the Senate last year by a margin of 89 to 6. The only changes are that provisions that have been overtaken by events have been deleted.

The bill would abolish the current five-member Commission and replace it with an agency called the Nuclear Safety Agency that would be headed by a single administrator. This new structure would be like the current structure of the EPA.

The bill also would create an independent Nuclear Safety Board. The Safety Board is modeled after the National Transportation Safety Board. It would investigate only the most serious events at nuclear powerplants. The bill provides for this board to have an independent look at serious events when the agency's own actions may have contributed to the cause of the event.

Additionally, the bill would establish a statutory Office of Investigations, which would report directly to the Administrator.

I believe the overwhelming support for this bill from our Senate colleagues indicates the depth and strength of the agreement in the Congress and the American people that the current structure of the Nuclear Regulatory Commission needs to be changed drastically.

I do not question the sincerity or the dedication of any member of the NRC. I do not question their commitment to nuclear safety.

However, I believe that much of the dedication and commitment is squandered as a result of the structure of the agency.

Too often the competing views of the commissioners result in indecision and ineffectiveness. We have seen this countless times. The Commission's approach to the maintenance rule that has occurred over the past several years, and that will occur for several more, and a waffling on the money-for-silence issues are but the latest examples.

The Commission's testimony contains many specific criticisms of the bill. No doubt the bill is not perfect. Several compromises were made during the consensus-building process in order to make this a nationally acceptable piece of legislation. The members of the subcommittee did not get everything that we wanted in the bill. That does not mean that the bill is not a good one. I believe that it is, and so does the Senate, by an overwhelming margin.

In its testimony regarding the details of each specific provision, I am afraid that the Commission may have lost sight of the bigger picture; that is that the Commission is not seen as an effective regulator of commercial nuclear power, and something must be done to change this, because I strongly believe in nuclear power; I strongly believe that we need a regulator that is strong and effective and perceived that way, also.

This proposal will take a necessary first step in restoring the agency's credibility. As I have said before, I have no illusions that simply reorganizing the NRC will be an overnight cure to today's problems with nuclear regulation. However, I believe that these problems will be here to stay without this reorganization.

I am pleased that the nuclear industry supports a single administrator. I am also pleased that the industry has indicated a willingness to work with the subcommittee to develop as good a bill as possible.

Once again, I would like to also thank our ranking Republican member, Senator Simpson, for all the support that he has given us on this legislation and all of the work that he has contributed to the subcommittee. It certainly has been a pleasure to work with him and his excellent staff.

I would like to note that, after this hearing, the subcommittee would like to move very quickly to mark up the bill and then proceed to take it to the floor.

Also, I would like to offer my congratulations to Admiral Carr, to your new position as chairman. Today will be your first appearance before the Congress, as I understand it, in this role, and we certainly welcome your being here in this new position and certainly look forward to working with you in that capacity in the future.

I would like to recognize our ranking member now, Senator Simpson.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Good morning, John, and good morning to you, Commissioner Carr. Congratulations to you on your chairmanship.

I join my friend from Louisiana and welcome you to the hearing on the bill that we have introduced. Senator Breaux has been

working hard on this one since his assuming the chairmanship. It is something that I was deeply involved in and think is very necessary. He has worked very hard, and I enjoy working alongside of him. He is a very diligent gentleman in his efforts, and I admire and respect that in him.

You could take the compiled remarks of Al Simpson on this issue and they would fill the corner of the building over there and slop over the side on top of that. I just think it is very necessary, and I will tell you why very simply. You will not hear me do the old collegial group that will not "college." I will not do that.

But I will tell you, if we ever have another transient like Three Mile Island, or something worse, or even less, it will be worse in the eyes of the public. I just do not want to see the anguish that would overtake the five of you as you have the lights on you for about 10 days. It would not be good, because they would say, "Do you ever talk?" And you would say, "No, we send memos."

"Do you ever visit with each other about the serious issues?" And you would say, "No, we do that through lawyers. We do that through scratchings on the back of match books and stuff like that." And the American public is going to be absolutely stunned that that is the way the business of the NRC is done, and it is the way it is done, layers of communication where there is no communication. That will be a terribly embarrassing thing for remarkable people to go through; people I have come to know, and that is what will happen to you all.

The light will fall on you, and Chairman Breaux and I will be sitting here, along with about 15 other committees of jurisdiction in the House and anyone who can get a handle on it over here, from the Health Committee to Human Services, to Environment and Public Works, to Energy and Natural Resources, and it will all fall right on you. And you will not be able to answer the questions because you have not been able to meet and sit down in a room together with nobody in there, no staff, no lawyers, and talk. And so, if it is that absurd, let's get rid of it.

Thanks, Mr. Chairman.

[Senator Simpson's written statement follows:]

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Good morning. I join my friend and colleague from Louisiana, Senator Breaux, in welcoming you to our hearing today on the legislation we, along with Senator Biden, have introduced to change the Nuclear Regulatory Commission into a single administrator Nuclear Safety Agency. Senator Breaux in particular has worked very hard on this legislation, and I enjoy working along side him. He is diligent in his efforts—I admire that and respect him for it.

A single administrator agency responsible for managing nuclear regulation and protecting public health and safety is a good idea, endorsed by many, which should have been enacted long ago. And in this Congress we will use all of our cunning to see that it is enacted.

As I mentioned, the single administrator concept has been endorsed by many. The Kemeny Commission and the Rogovin Special Inquiry Group, both of which investigated the accident at Three Mile Island in 1979, concluded that the agency responsible for nuclear safety should be headed by a single administrator. Of the former NRC Commissioners we have had testify before us in recent years on similar legislation, most have agreed that the commission structure has significant managerial drawbacks, and many supported a single administrator agency. The nuclear indus-

try as well has testified that a single administrator agency is needed to promote efficiency and effectiveness in the regulation of nuclear power.

It has been said that the 5-member commission was an historical accident, and I believe that is true. The Atomic Energy Commission, the NRC's predecessor, was structured as a commission because of its early responsibility for developing and managing the nuclear weapons complex. In 1962, however, President Kennedy tried to create a single administrator agency in place of the AEC, but met with Congressional opposition.

When NRC was created in 1974, the commission structure was retained simply because the AEC had been a commission, although the original need for that structure no longer existed. In 1979, during and after the Three Mile Island accident, it became readily apparent that a commission could not function effectively. In response to the recommendations made by the groups investigating that accident, President Carter reportedly wanted to propose a single administrator agency, but again was faced with Congressional opposition. Instead, he sent Congress a reorganization plan which purported to give the NRC Chairman more administrative authority. The organizational changes made as a result of the reorganization plan, however, have been limited at best.

In short, what we need is to make the agency which regulates nuclear power work better, and what will work better is a single administrator agency. We need a respected, effective, and efficient regulator of nuclear power in order to restore public confidence in this important source of energy and to regain a viable nuclear energy program. Nuclear power is a clean, safe, needed energy source that can reduce our reliance on imported oil and other, less environmentally sound energy alternatives.

I fully support the creation of a single administrator agency to replace the current commission structure and look forward to working with Senator Breaux to insure the passage of this legislation in this Congress.

Senator BREAUX. Thank you very much for your comments, Senator Simpson.

Senator Reid.

OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Mr. Chairman, Senator Simpson, we have acknowledged the fact that this is Admiral Carr's first appearance before Congress as Chairman, but I bet it will not be his last.

On August 8 of last year, the Senate passed a bill to reorganize the five-member Nuclear Regulatory Commission into a new Nuclear Safety Agency. The new NSA would be run by a single administrator appointed by the President and confirmed by the Senate.

The reorganization proposal was part of a larger package encompassing other nuclear-related measures. We were able to reach agreement with the House prior to adjournment, and therefore it failed.

The bill before us today is essentially the same as that reorganization plan which passed by a vote of 89 to 6 in the Senate. The Nuclear Regulatory Reorganization and Reform Act of 1989 introduced by Senators Breaux and Simpson replaces the five-member NRC with an independent agency headed by a single administrator.

Although the current five-member Commission should provide a credible regulatory structure for the formulation of policy, this has not always been the case. In fact, the committee's report on the single-administrator bill passed during the 100th Congress noted:

> The collegial decisionmaking process has evolved over the years to the point where it appears that very little collegial decisionmaking actually takes place at the Commission with all five Commissioners present to discuss and decide issues.

The need, therefore, exists to improve agency efficiency in order to promote public health and safety. My colleagues are to be commended for their continuing efforts to address deficiencies in the process regulating the nuclear power industry.

Last year I worked with the chairman and Senator Simpson to ensure that NSA's presidentially-appointed administrator does not have unlimited discretion over the licensing of the nuclear waste repository. Yucca Mountain, located about 90 miles northwest of Las Vegas, is the only site under consideration by the Department of Energy to house deadly radioactive waste for the next 10,000 years.

S. 946 requires the NSA administrator to establish a three-member licensing board to consider an application to be submitted by DOE for construction authorization for the repository. After a final decision is issued by the licensing board on the application, the administrator may either affirm or remand the decision if it is not supported by substantial evidence. This will provide a necessary system of checks and balances during the licensing phase of the process.

I think it is important to note at least to my two colleagues and certainly to the panel that a senior scientist from the NRC, on June 26, found the nuclear site at Yucca Mountain to be in a volcanic area and, in his words, unsuitable for a nuclear waste repository. So this complicates issues significantly, since this is the only site that has been chosen.

I thank you, Mr. Chairman, for holding this hearing, and I do look forward to the expeditious action of this single-administrator bill.

Senator BREAUX. Thank you very much, Senator, for your opening comments.

I would like to welcome all the members of the Commission. We are pleased to have Commissioners Thomas M. Roberts, Kenneth C. Rogers, and James R. Curtiss as well as the chairman. Once again, Chairman Carr, we welcome you in your new capacity and are pleased to receive your testimony.

STATEMENT OF HON. KENNETH M. CARR, CHAIRMAN, NUCLEAR REGULATORY COMMISSION

Mr. CARR. Thank you, Mr. Chairman.

I will say one thing. I appreciate your words of welcome in my new position as chairman. I have found out since I took this position that I have lost my ability to maintain a low profile, and I find that my personal hours are getting longer, and I am sure you find the same thing.

Mr. Chairman and members of the subcommittee, my fellow Commissioners and I are pleased to appear before you today to discuss S. 946, the Nuclear Regulation Reorganization and Reform Act of 1989. We have a brief opening statement. With your permission, we will request that our full testimony be included in the record.

As you are aware, with the recent conclusion of Chairman Zech's term, the five-member Commission now has only four members. The Commission is evenly divided on the concept of transforming the Nuclear Regulatory Commission into an agency headed by a

single administrator. Commissioner Rogers and I oppose restructuring the NRC into an agency headed by a single administrator, while Commissioners Roberts and Curtiss support the concept.

However, the majority of the Commission does not support S. 946 for reasons that we will specify in our discussion of key elements of the legislation.

If a single administrator agency is to be established, a critical issue is the relationship of the safety agency to the Office of Management and Budget. Consistent with NRC's status as an independent regulatory agency, the NRC is not subject to OMB regulatory oversight. Thus, with the exception of legislation and testimony that are budget-related, the NRC does not submit its legislative correspondence or testimony to OMB for clearance.

The NRC also does not submit its draft proposed or final rules to OMB for review except where the rule contains information collection requirements falling within the purview of the Paperwork Reduction Act. If OMB disapproves the information collection requirement, by majority vote the Commission can nonetheless impose the requirement. Thus, OMB does not conduct a substantive review of any NRC rule.

Under S. 946, this would change. OMB would clear all of the agency's legislative proposals, its testimony, and its comments on specific legislation. OMB would also review the agency's draft proposed and final rules under a statutory prescribed time schedule. The legislation states that the OMB review would not diminish the agency's authority to promulgate rules.

The majority of the Commission finds the approach embodied in S. 946 to be unacceptable. For the new agency to have the independence to make necessary health and safety judgments, it should continue to have the same relationship with OMB that the NRC now has.

Another of our significant concerns relates to the establishment of a Nuclear Reactor Safety Investigations Board. The majority of the Commission believes that the creation of a separate, independent investigations board is inconsistent with the justification for creating a single administrator. The incentives often cited for a single administrator are to centralize authority and enhance accountability at the top of the agency.

However, this provision diffuses responsibility and accountability. For example, an independent fact-finding board would likely lead to a duplication of existing agency functions and result in multiple government spokesmen on the causes and significance of incidents.

The Board's activities might also hinder the administrator from acting effectively in the event of an incident. The Administrator might be hesitant to take enforcement action or impose new regulatory requirements during the pendency of the Board's investigation.

Under S. 946, a Nuclear Reactor Safety Investigations Board would investigate incidents at nuclear power reactors that meet the same criteria as the Commission now uses to classify events as abnormal occurrences. For the last eight years, there have been an average of seven such incidents each year, but for each of the past two years, there have only been three such incidents.

This reduction in abnormal occurrences is consistent with overall improvements in performance as seen through the performance indicators monitored by the NRC. Thus, based on current trends, the workload of the board might be exceedingly light, and therefore the resources provided in S. 946 would be excessive.

Also, under S. 946, the three members of the board would be nominated by the President and confirmed by the Senate. The majority of the Commission believes that the board members should be appointed by the Administrator rather than the President.

Finally, S. 946 would eliminate the position of the Executive Director for Operations and would also establish a statutory Office of Investigations headed by an Assistant Administrator for Investigations that would report directly to the Administrator. The majority of the Commission does not support these provisions. We believe that it is desirable that a senior career civil servant assist the Administrator in the management of day-to-day staff activities, and we see no need for Congress to mandate that the Assistant Administrator for Investigations report only to the Administrator.

A more detailed discussion of our views on S. 946, including our views on the various miscellaneous amendments, is included in our full testimony.

The Commission appreciates the subcommittee's consideration of its views on this important proposed legislation. Additionally, we appreciate that two of the NRC's legislative proposals are included in S. 946.

Mr. Chairman, Commissioner Rogers has a separate statement.

Senator BREAUX. We would be pleased to receive it.

Commissioner Rogers.

STATEMENT OF HON. KENNETH C. ROGERS, COMMISSIONER, NUCLEAR REGULATORY COMMISSION

Mr. ROGERS. Mr. Chairman, members of the subcommittee, I am pleased to offer my comments on S. 946.

I am wholeheartedly in support of the position taken by Chairman Carr in each of the areas covered by the proposed legislation. My purpose in presenting this short additional statement is to emphasize my own experience over the past 2 years as a commissioner of the Nuclear Regulatory Commission.

I must take exception to the comments of those who have stated that the Commission has not functioned well and is not capable of doing so. This Commission is working effectively, and the Commissioners have been diligent in finding solutions to policy questions without delaying important actions.

During the past year alone, the Commission has taken significant action on extremely important matters such as licensing reform, establishment of procedures for determining the licensability of a high-level waste repository, enhancing the professionalism of reactor operators, improved maintenance at nuclear power plants, and fitness-for-duty regulation to obtain a drug-free nuclear workplace.

This Commission, with the collegiality of its members and diversity of views, can and does operate successfully with strong leadership of the Chairman. We have had strong leadership under Chair-

man Zech, and I am absolutely confident we will continue to have such strong leadership under our new Chairman, Kenneth Carr.

I am of the opinion that collegiality among the Commissioners cannot be effectively duplicated in a single administrator agency where an administrator's subordinates tend to be people who are selected for their capacity to carry out decisions effectively but not necessarily to set policy, and they are unlikely to advance any counter views on policy matters to those held by their superior.

A diversity of viewpoints on policy matters is most likely to come from a group of individuals who are not subordinate to the agency chief executive and who have had the kind of broad experience that should be required of those who set policy. Such individuals should be peers, not subordinates, of the agency chief executive and should have had the career records of accomplishment that command the respect of each other and of the chief executive officer.

I ask you, Mr. Chairman and members, not to dismantle this effective Commission, which is working well, by setting up a new type agency with unknown prospects for success.

Thank you very much.

Mr. Chairman, I might address two comments. One is on the ability of the Commissioners to handle accidents such as Three Mile Island and the fact that we would not be able to sit down and take care of this. I would invite the subcommittee members to come out and watch one of our emergency response exercises from our command center. There is no diversion of responsibility. It is apparent who is in charge. There is plenty of capability to make those decisions. I think, if you witnessed one of those exercises, you might modify that opinion somewhat.

As far as how business is done at the Commission, the carpets are well worn between Commissioners' offices. The fact may be that the five of us do not get together sometimes and may not air all the issues, but I can assure you that they are aired individually and between Commissioners, and I think you will see that there is much more interaction among the Commissioners than evidently is your impression of what is going on. There are not a whole lot of notes passed back and forth between Commissioners.

Senator BREAUX. Do any other Commissioners have an opening statement?

[No response.]

Senator BREAUX. Thank you for the presentations.

Let me start off by pursuing testimony with regard to the establishment of the Nuclear Reactor Safety Investigations Board. I find the comment on page 7 and 8, Chairman Carr, of your testimony interesting. It says, "The majority of the Commission believes that the board members * * *"—after saying you oppose the creation of the board, you make some suggestions as to how, I take it, if it is in fact established, how you feel it could be improved.

One of them is the fact you point out that the majority of the Commission believes that the board members of the Safety Board should be appointed by the administrator rather than by the President, and you point out that that would better ensure that that agency has the necessary independence to make the necessary health and safety judgments.

All of you are appointed by the President. Surely you would not question or raise the point that that somehow takes away from the necessary independence that you have to make the necessary health and safety judgments. So, if it is all right for you to be appointed by the President, what is your philosophical objection to having an independent safety agency appointed by the President?

Mr. CARR. You will notice I deleted that in my oral statement because it really did not explain the whole situation. My personal opinion is that the independence of the current members of the Commission is reasonably assured by the fact that our terms are 5 years, so we are independent of the administration, if you will.

Senator BREAUX. So all that bothers you about it is that you have a set term and they would not?

Mr. CARR. That is one of the things that bothers me about it. The other thing is that, as the bill is written, I would expect those people to change with the administration, or certainly the possibility exists, and all the nominees in the current bill are subject to change with the administration, and I think that gives the potential for not just a veer in a direction but a radical change in direction and in policy direction.

Senator BREAUX. Let me read you a little bit from the bill itself. It says, "The terms of the members of the board shall be 3 years." So it is a fixed term in the bill.

Mr. CARR. And you will alternate one each year; that is correct.

Senator BREAUX. That is a fixed term. Aren't you on the same type of situation?

Mr. CARR. Yes, you are correct, sir. But your first question was about our terms, and I just——

Senator BREAUX. I do not agree with the fact that you can say somehow you are independent and you are appointed by the President, but that this board that is going to be appointed by the President does not have any independence. You have a fixed term; they have a fixed term.

Mr. CARR. That is correct. I guess my comment is that one President can appoint all three members.

Senator BREAUX. All right.

The comparison that I have always used with regard to a safety agency or a safety board, that there may be significant incidents, and that is what we are asking the safety board to address, not when someone falls off a ladder at a plant. That is not a significant incident that would generate a safety board to come into play.

We are talking about significant incidents, and your testimony, I think, points out that the number of these in our definition has been declining. I think you mentioned maybe seven in a year, and in the last couple of years maybe there were only one or two that would fit that description.

The FAA, which has a single administrator, is covered by the National Transportation Safety Board. The concept works very well there. When a plane crashes the Safety Board independently comes in and determines what caused the accident—it may be pilot error, it may be manufacturer's error, it may be the FAA's error for not provoking a proper maintenance schedule—so the concept of an independent safety board is to make an independent finding. They could find even the FAA at fault for that particular accident,

and that is one of the things we are trying to achieve with this agency.

With regard to a nuclear accident, you are the regulatory agency, and you are also, under the current situation, the one who determines what caused a significant incident if one should occur. We are trying to get away from that. I am trying to help you. I am trying to help the agency get more public respect and confidence.

Why, in your opinion, does that not work? Because it works, I think, very well in other similarly situated types of agencies in our government.

Mr. CARR. I think the incidents that you are thinking about investigating with the board, in my personal opinion, are incidents that are much more serious than any of us hope to have, because all our responsibility is to make sure those incidents do not happen.

Senator BREAUX. Well, that is a given; I mean, we all agree with that.

Mr. CARR. That is a given.

The abnormal occurrences which you have used and which is a proper use, I think, for the last year, for instance, were only three, one at Fort Calhoun, one at Perry, and one at Farley Unit 2. Only in one of those did we send an independent team to investigate because it was of sufficient interest that we thought that it might have a safety significance that was not immediately apparent.

Our abnormal occurrence determination is not made until that investigative team comes back, and then they decide whether it is an abnormal occurrence or not. We decide that. So the abnormal occurrence does not suddenly appear on the scene and say that is an abnormal occurrence. Sometimes that does not appear until after the investigation is over.

Senator BREAUX. Is your objection to the independent safety board the mechanism that triggers an initial investigation by the board? Is that all?

Mr. CARR. An airplane crash kills people. Train wrecks kill people. The National Transportation Safety Board becomes involved immediately in those accidents. We try not to kill people. The Three Mile Island accident, that type of accident, there is no doubt in my mind, as Senator Simpson says, we will have plenty of investigative boards to look at accidents like that, and they will also look at the NRC as they did before.

Senator BREAUX. But the problem, Mr. Chairman, I would submit to you, the thing that we are trying to correct—and I think Senator Simpson very eloquently addressed it—is that we should not have to have a major incident and have the Congress come in and create a whole new institution just to investigate that particular major occurrence. We do not come in and every time a plane crashes create a new agency to find out why it crashed and also to investigate the regulatory agency that regulates it. It is already in place. It is a procedure that works; it is established; there are clear rules of how those investigations are to occur.

Mr. CARR. I have no argument with that, sir. All I am trying to do is make the point that we do not have enough work to keep those people busy. The point is that you set up the board with a staff that is larger than is necessary to handle the kind of work-

load it may have based upon the type of incidents you want it to investigate.

Senator BREAUX. All right, then, we are talking about an objection on the size of it.

Mr. CARR. Certainly the size, yes, sir, and the amount of money that is required, and perhaps the triggering incident.

Senator BREAUX. Suppose a major incident occurs, and an investigation determined that the NRC was at fault by not promulgating proper rules or maintenance schedules or lacked proper supervision or, inspections, who, under the current situation, would have made that investigation?

Mr. CARR. We have an Incident Investigation Team that goes on the very major occurrences. We have had three of those in the history of the incident investigation programs that have been set up.

Senator BREAUX. And whom do they work for?

Mr. CARR. They work for the Commission, but they are independent of the problem, as much as anybody could be, and their object is to go out there, find out what happened, why it happened, and put the finger on the problem, whether it is ours or theirs. We do not try to say we are perfect. We are happy to point out where we have made mistakes, and we have made some, I am sure.

For the lesser incidents, we have another type of investigation team that investigates incidents of lesser safety significance than the others, and that is the AIT.

Senator BREAUX. Chairman Zech last year talked about the size of the board. He said at that time when I asked him about the size of the independent safety board, he said,

> Frankly, Mr. Chairman, it seems to me right offhand that for the work that would be involved, it is a rather generous number. I believe that, at least from a starting point, it is a reasonable amount and should be reviewed after a period of time. But it does seem reasonable to me, and perhaps even more than necessary.

Those of you who were here at that time did not object to that. I asked in fact, "How about the rest of you?" and there was no objection to that at that time. Is this something new we have decided to look at?

Mr. CARR. No. I assumed at that time what you were doing was taking in the people who are currently in our Office of AEOD, which is a number of people about the size of the proposed Board that investigate for us currently as well as perform other activities. But if you are going to say that the investigators that are currently assigned to that job are going to do the same investigations for the proposed Board, then I would say we have that team in place already.

Senator BREAUX. Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

I see that the Chairman and Commissioner Rogers oppose the concept. Last year the Commission approved it. That is kind of a shift in policy in itself within the ranks of the Commission. There is nothing wrong with that, but that is the kind of stability that I am thinking of.

I agree with you that the Commission has done some very good things in these last years under the chairmanship of Admiral Zech. He was tough and firm. And I would also agree that the current Commission seems to work well together. I would certainly dis-

agree that that has always been the case. It is certainly not the case, not in my experience of 11 years on this subcommittee.

But, indeed, you have moved some things along that we were not even able to move in the legislature. I do not know whether they are complete enough. We will find that out, and if they are not, we will try to move them legislatively.

But I have never understood why you should remain as really the singular mastodon in the elephant graveyard as a commission, because everything else we deal with in America that has anything to do with the public health and safety is a single administrator: The Mine Safety and Health Administration, Occupation Health and Safety, FAA, the EPA, the Federal Highway Administrator, the FDA, the Drug Enforcement, DEA, National Traffic Safety Administration.

The only one that is still functioning in its role and mission is totally different, the Consumer Product Safety Commission. That is what I am talking about; that is all. What in the world is the purpose of holding out with the NRC? You tell me.

Mr. CARR. I guess my answer to that, Senator, is, when I first came on the Commission and I was asked this question, I said I neither support it nor am I against it; I will have to watch it work to decide whether I am for it, because I came from a background where there is always one guy in charge and he runs it.

Having watched it for 3 years, I am of the opinion that the commission concept can work. It is very important whom you confirm to be members of the Commission to make it work. But, having decided that it can work, I do not personally think that you should necessarily shoot it because it did not in the past work. It is a relatively young agency. The whole nuclear power industry is relatively young.

We have got a bunch of new things coming down the pike with new reactors and waste disposal that have not been done before. I think we would benefit from a variety of experience and background. I know in the areas where I feel that I do not have the experience, it is nice to have somebody to talk to. Those are my personal opinions.

As far as the independence of the agency, I would not have considered this job had it not been an independent agency. I did not need the work. I came down here because it looked like it was independent and I could do something that I thought was right without a lot of interference from anybody else in the picture. And that is why I think that it would be risky, in my opinion. You will have a tough time finding the right administrator and deputy to do the kind of job that I think needs to be done.

So those are personal opinions. You might need to poll the rest of this Commission to find out—I am sure there are other opinions, and I am not sure I speak for everybody.

Senator SIMPSON. Well, I think there would be a lot of people that would love to do this job as a single administrator in Washington, D.C., or anywhere in the country. That would be my view. I would think they would be chomping at the bit.

Doesn't it appall you, the inability to meet as a group and informally discuss a particular issue? Doesn't that frustrate you, talking

about the sunshine laws and all the rest of it? That is what I am talking about.

Mr. CARR. Nothing keeps us from doing that.

Senator SIMPSON. Well, something should. It is called the law.

Mr. CARR. We can meet publicly.

Senator SIMPSON. I know, but you cannot meet informally. You cannot go have a cup of coffee, the five of you. You cannot do that under the law.

Mr. CARR. But we can meet——

Senator SIMPSON. Are you doing that? If you are, good. I am glad you are.

Mr. CARR. I have certainly considered holding public meetings at 8 o'clock.

Senator SIMPSON. I am not talking about public meetings.

Mr. CARR. What is wrong with doing it in public? It shouldn't restrict anybody.

Senator SIMPSON. I am not talking about doing it in public. The people of America think it is a collegial group that gets together informally, kicks their shoes off, and talks about the health and safety of this issue in the United States. You cannot do that, or if you are doing it, I think it is great, but I don't think you can do it under the law.

Mr. CARR. We are not doing it.

Senator SIMPSON. Well, then, you are not getting it done. You are not doing that informally.

Mr. CARR. Not four at a time.

Senator SIMPSON. Well, that is right. And I think the people of America thought you were. That is all I have been saying for years.

Mr. CARR. Well, I did not know much about this Commission before I got here, but I was not under the impression that that was what they were doing.

Senator SIMPSON. Well, the American people are generally afraid of nuclear power and so they think that somebody is sitting down somewhere and informally talk about human health and safety. That is what they think, and that is what is not happening in your Commission, is it?

Mr. CARR. Not more than two at a time.

Senator SIMPSON. That is right.

Mr. CARR. It is happening. We are talking. We are discussing issues.

Senator SIMPSON. But not more than two at a time?

Mr. CARR. That is correct, sir.

Senator SIMPSON. Because the law prevents——

Mr. CARR. Except in a public meeting.

Senator SIMPSON. That is right. Well, I am not even talking about public meetings. I said informally when I asked the question; that is what I am still talking about.

Mr. ROGERS. Could I make a contribution on that?

Senator SIMPSON. Please.

Mr. ROGERS. As you know, I come from the collegial world, the academic world, and I am very familiar with collegiality and how it works and what it really does mean.

It does not necessarily mean that everybody has to sit down at one place and yak. It is a state of mind. It is a state of receptive-

ness to other ideas, to debate ideas, and to come to something based on a notion that there are good ideas that come from the collegial body, however you extract them.

It would be nicer if we could all meet at one time, in one place, and take our shoes off. But I think the important essence of collegiality is an exchange of ideas and a receptiveness to the notion that, together, a group can jointly come to a position which is better than what any one of the individuals might necessarily be able to come to by themselves, and that, indeed, is happening.

There is no doubt in my mind that the position of this Commission over the last year or year-and-a-half that I have been able to watch it has come to points that represents a better position based on the diversity of points of view of the individual Commissioners, and that has been by one-on-one meetings; it has been by exchanges of various kinds, through our staff, and a clear understanding of where each of us is coming from before arriving at a total decision on something.

So the essence of collegiality is the sharing of diverse points of view to come to a stronger result than any one individual might achieve on his own. And that is the essence of what has to happen, not the form of whether one sits together in one room to do it, however it takes place; and it is taking place.

Senator SIMPSON. Well, in my mind, it is absurd to say that diversity takes place only in that atmosphere. Every single administrator in Washington gets diversity from their staff and from the people that they deal with.

All I know is that you have not been there yet. When something is going to go, you five will be sitting right here for about 10 days being picked apart by Senators and Congressmen, and you will not be able to ward it off, because both the Kemeny Commission and the Rogovin reports strongly said that the agency is in disarray.

And wait until you get there. Wait until you have somebody down there at that plant. Wait until you get on the phone and the tube and you are talking to the linkage system. You ain't seen nothin' yet. And in that situation, you are going to sit and you are not going to agree. And the American people will disassemble you at that time. That is what I am saying. I hate to see that.

Mr. CARR. But in those emergencies, the chairman has the responsibility.

Senator SIMPSON. I know the chairman has the responsibility. I am fully aware of that. Then they are going to turn to Commissioner Roberts or Commissioner Curtiss or Commissioner Rogers and say, "How do you feel about that?" and then they are going to realize that the only way you ever reached an accord was through the distribution of something called a discussion memorandum or a legal this or something else.

Don't worry about me. I will be staggering around here, God and the voters being willing, but I have real concern about you people when it all breaks loose. You are going to really see what happens.

Mr. CARR. Let me assure you, on my watch it is not going to happen.

Senator SIMPSON. Well, that is a pretty extraordinary statement.

Mr. CARR. While I am there, I will be in charge of that particular part of the problem.

Senator SIMPSON. Well, let's remember, then, that when they have the first 12-camera hearing, and after 10 days of it, then you and I will chat about it.

Mr. CARR. It is one of the hazards of the job, sir.

Senator SIMPSON. Yes, well, you will find out.

Thank you, Mr. Chairman.

Senator BREAUX. Thank you very much, Senator Simpson.

I am very concerned about the question of maintenance and how we handle it, plants are getting older, and, as with everything in life getting older, you need more maintenance. Whether it is the human body, whether it is an airplane or a train or an automobile, it needs more maintenance, and you have to follow a regular maintenance schedule if you are going to keep things working in the way that they are intended to work.

Last year in November the Commission issued a proposed rule on maintenance. The industry at that time strongly opposed the maintenance rule, arguing that it was unnecessary and pointing out, as I remember it, that only six to eight plants in the country had really poor performance records in the entire industry due to maintenance. I think if you have one, that is too much. But they said only six to eight were really poor performers due to maintenance.

In April, our staff recommended to the Commission that the Commission approve the issuance of a final rule to set up a maintenance program. In May, the staff briefed the Commission, and some of the excerpts from that briefing, I think, are important to have before us.

Vic Stello said, "I have come to the view that I think we ought to continue going forward with the maintenance rule."

Mr. King of the NRC staff said, "We feel now that enhanced safety is the proper approach for justifying this final rule and regulatory guide."

Commissioner Carr, at that time, you said, "I, too, am convinced that a maintenance rule is needed, but I am not any more convinced that we know how to write a good one than we did when we started."

Commissioner Rogers said, "Well, I believe we do need a rule, maintenance rule."

Commissioner Curtiss said, "I gather, with a few exceptions. . . ." He talked about the bad plants and, I think, generally supported the rule.

Chairman Zech at that time said, "I, too, am very disappointed in the utilities' response to the rulemaking effort. Clearly, it is a safety matter, in my judgment."

Having had all of that set out before the Commission, and the majority of the Commissioners supporting a rule, 3 weeks later the Commission voted to issue a revised policy statement emphasizing the importance of maintenance and the Commission's intent to issue a rule in a year-and-a-half, 18 months, if the progress on maintenance was not sufficient.

My point is, why do we not have a maintenance rule in place? Again going back to the airline industry as an example, the FAA sits down with the manufacturer of the plane, the owners of the plane, and together they come up with a maintenance rule and regulation that, if it is not followed, it is subject to being fined. If it is

a serious enough violation of the maintenance requirements, the license can be lifted from the carrier.

And yet, in the nuclear regulatory industry, we do not have a federally required, comprehensive maintenance procedure for the plants that are out there. My simple question is, why not?

Mr. CARR. I think your point is well taken. One of the major issues I brought with me when I took the job was that it is amazing that we have all kinds of rules on operation and we do not have a rule on maintenance.

If I knew how to write that rule, it would be issued already.

Senator BREAUX. That is as disturbing as anything I hear. Here is the agency that is in charge of regulating the safety of the nuclear powerplants, and you tell us that we do not have the capacity to write a maintenance rule on how the plants are to be maintained. What kind of credibility and what kind of message is that going to send to the people we are trying to convince that this operation is being run safely?

Mr. CARR. It is not quite the same thing as the airline industry in that they produce a lot of planes of the same kind. They get a lot of operating hours on those planes.

We have very few plants of the same kind. We have a varying number of operating hours. We have different manufacturers with different recommendations. We could write a special rule for each plant. What we are trying to do is write a maintenance rule that will cover not only the plants we have now but the ones that, hopefully, come on the line in the future.

Maintenance is a very tough area. I have used the example of your automobile. Do you follow the recommended maintenance in your automobile manual that says "Recommended Maintenance"? Very few people do. If there were a rule out, they would go to jail if they did not do it. We have to be very careful that we write in that maintenance rule things that must be done. It is a very tough job when you are saying this must be done because then the utility is in the position of saying, "I did everything you said do, and that wasn't enough."

The policy statement is a very good statement. When the staff came back, they regurgitated the policy statement in the rule but said that the regulatory guide to follow will really tell you what you have to do. However, the draft reg guide is not a very good document.

Nobody in the NRC has a lot of experience in maintaining nuclear power plants. The utilities have that experience.

Senator BREAUX. We are not saying that you go out and do the maintenance work, Mr. Chairman. What we are suggesting is that you have a set of rules and regulations that you see to it that someone who in fact is running the plant maintains it.

I do not accept the fact that it is impossible to do. If the plant is manufactured, somebody who manufactured it should know what the maintenance should be to keep it in tip-top shape. We have 727s, 737s, 747s, Airbus, McDonnell Douglas, Boeing. We have airplanes of all types and varieties, and I would suggest that the maintenance of each one of them, although similar, is specifically detailed to that type of plane. That system works.

Mr. CARR. You did not listen to what I said originally.

Senator BREAUX. Oh, I listened, I think, very carefully. What you are saying is that they have a lot of different plant designs out there; it is going to be difficult to come up with a maintenance program. Then you said we cannot enforce with the car example. I would suggest that if someone does not maintain a car properly, the car breaks. But in the case of running a nuclear plant the risks are not the same. If a plant breaks, a lot of other things can happen, endangering more than just one individual.

Mr. CARR. We are trying to write a comprehensive rule that will apply to all power plants and write the rule that will get the job done. I believe that rule will be written. That 18-month period was not picked by chance. I will be here 2 years.

If we do not see the proper answer from the utilities as far as correcting the problems we will issue a rule—one of the things that bothered me is that the rule as it came to the Commission eliminated the balance-of-plant problem. Some of my fellow Commissioners do not agree with me, but the balance of plant is a major source of challenges to the plant these days. So the rule was not ready to be issued, in my opinion. That is why I said we should wait until we get the experience.

We have teams out inspecting plants now for maintenance. The plants also say they learn a lot from those maintenance inspections. Everybody is learning in the maintenance game. It is a new business. We have got—well, they are big plants.

Senator BREAUX. I do not want to blame you for past sins, but a final point: Don't you find it quite amazing that we have had nuclear power in this country since the 1950s, and that we do not have a comprehensive maintenance plan in place by the Federal agency in charge of regulating the safety of those plants?

Mr. CARR. I certainly do, and that was my first statement when I got there.

Senator BREAUX. Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman, and thank you for pursuing this matter as you have done.

You know the ways of the other body and are prepared to be patient with them, and I think that is probably necessary.

I would like to ask a few questions of the Commission. With respect to the maintenance, sir; there are what, about 110 nuclear plants in the country?

Mr. CARR. Yes, sir.

Senator MOYNIHAN. How many?

Mr. CARR. There are 111 operating right now, I think two more that are 5 percent licensed.

Senator MOYNIHAN. One-hundred and eleven. If there were 111 automobiles in the country, I think we would have a maintenance manual for them. There are 111 of these things. You can name them. If they were grandchildren, you could name them.

And they are all about that old. Or great-grandchildren. They are about that old, too.

How many plants have been opened in the last 10 years?

Mr. CARR. I will ask the staff for that one. I know Chairman Zech said, I think, they licensed 33 on his term.

STAFF. Approximately 33, Mr. Chairman.

Senator MOYNIHAN. How many have opened?

Mr. CARR. In the last 10 years, I do not know, but in the last 3 years, there were 33, I think.

Senator MOYNIHAN. Thirty-three nuclear plants have opened up in the last 3 years?

Mr. CARR. Yes.

Senator MOYNIHAN. I see some disagreement in the back of the room. Does anybody here disagree? Mr. Chairman, this is your committee, your hearing, but does everybody agree that there have been 33 new plants come on line in the last 3 years? One a month?

Mr. ROGERS. Five years. It is 33 in 5 years.

Mr. CARR. Why don't I provide it for the record? There are papers appearing out of everywhere.

[The following information was provided for the record:]

Since 1979, 46 plants have been granted full power licenses, and 45 of those (with Shoreham being the exception) have generated electricity.

Senator MOYNIHAN. Let's see. All right, we will find out. How many are being built today?

Mr. CARR. There are three under active construction. In the last 5 years, since 1984, we have issued 33 full-power operating licenses, and there are three under active construction right now.

Senator MOYNIHAN. And the construction takes about 10 years, doesn't it?

Mr. CARR. It varies.

Senator MOYNIHAN. You have three.

Mr. CARR. Three are currently under active construction.

Senator MOYNIHAN. Which suggests to me that the nuclear power industry has died on your watch, sir.

Mr. CARR. On my watch it may have, yes, sir.

Senator MOYNIHAN. I mean quite seriously.

Mr. CARR. Certainly on the watch of the Nuclear Regulatory Commission per se.

Senator MOYNIHAN. That is not adversarial. I mean on the watch of the NRC. The nuclear power industry has died on the watch of the NRC. And, Mr. Chairman, there are people who will like that, and there are people who will not like that, and there are people who would just be curious to what extent is this a causal relationship. I cannot say, but I think there is something called public administration, and we do have experience with this in our country, particularly. There are situations which are adapted to multiple leadership, particularly where there are sort of public values at issue, and in public they get sorted out by having more than one person involved.

But where you have a policy of promoting nuclear power, which is what we have had since President Eisenhower's Atoms for Peace in 1953 and then the Nuclear Power Act of 1954, we have had a policy of adding to nuclear power, and it has come to a halt. I cannot but think that at some level this is a problem of executive administration, and I just do not think, with all respect to the past—the AEC began at a time when the technology was new and not understood and developing. It is not the case anymore.

If we are going to have nuclear power in this country, we need an agency with an executive who is responsible. If decisions are

made, you know who makes them, and they are made in a timely manner, and there is some response.

I do not mean to make a speech, sir, but I want to say to you, we were here on the Three Mile Island.

Mr. CARR. Yes, sir.

Senator MOYNIHAN. And I will never forget, I was very junior in this committee at that time. We had a special committee, and it was headed by Senator Hart. By the time my turn came to ask a question, well, all the questions I could think of had been asked, and having nothing much in mind, I just asked the head of the company who was the operator of the plant, I said, "How much did the man who was in charge of the reactor that night make a year?"

It was a scene out of a Peter Sellers' movie. The chief turned to his chief, he turned to the deputy chief, and way back in the room somebody knew, and the heads moved back, and it turned out he made about $28,000 a year, which struck me immediately as that the utilities have taken the work practices of a stationary engineer in a coal-fired plant and transferred them right over to a nuclear plant.

A coal-fired plant can be badly handled and the bearings burn out, and in the worst of circumstances a boiler can blow up and a fellow can get himself killed. But you cannot kill Pennsylvania, whereas you can in a nuclear plant. They didn't know that it could cost you a billion dollars.

Airline pilots who make $110,000 a year and fly around, most of the time they just sit there and look at dials. Once in their lifetime, maybe once, they have 3 seconds to decide whether everybody on board dies, and they get paid for that 3 seconds, and they get put in uniform, and they get saluted.

In those days, you would go into most nuclear plants, and meaning no disrespect to the great Far West, nuclear powerplant, looked like the back room of a gasoline station in Wyoming in the 1930s.

Senator SIMPSON. Oh, no. Montana.

Senator MOYNIHAN. Montana, all right. You know, these guys hanging around in their cowboy boots and their jeans maybe, and maybe a shirt on, maybe not a shirt on. It did not look like a nuclear submarine to me.

I started to talk about an academy. Get these people in uniform. Tell them they are something. Make them important. Give them a graduation, give them a badge. I got no reaction out of the Nuclear Regulatory Commission at all, none whatever. I am not surprised the system has died.

I just want to say I am for this bill. I think you have an institutional problem which has nothing to do with any individual. I think, in circumstances like this, multiple leadership, becomes multiple and ceases to be leadership.

Senator BREAUX. Thank you very much for your comments. That was well said.

Let me ask just one other question of the Commission regarding the Yucca Mountain situation, if you can provide the information for it.

Mr. Trapp of your staff states in an internal memo that you had sent over to the Department of Energy quoting, "The Yucca Mountain site would have a very hard time passing a licensing hearing

strictly on the volcanic issue," expressing the concerns of a senior geologist about the Yucca Mountain site.

Can you tell me what the position of the NRC is on this issue at this time?

Mr. CARR. Well, I met with Mr. Trapp and his leadership. I think he has raised questions that have to be answered. He is one of a group of scientists who are looking at the problem. He went out there and looked and properly expressed his opinion. The facts are not all in yet.

If you notice, in his one statement, I think there is a very key statement at the end on—well, it is not quite the end, but he said, "Even if I am shown to be 100 percent wrong, the information obtained would be extremely valuable in evaluating the entire tectonic framework for Yucca Mountain."

So I think that puts his statement in perspective. He is one scientist. He is entitled to his opinions. He is a knowledgeable guy, and the questions he asks deserve answers. And so we forwarded his memorandum over to the Department of Energy and said this is typical of the kinds of questions you are going to get asked, and we look forward to the answers.

Senator BREAUX. Can you tell us the status of the entire process right now? Where are we?

Mr. CARR. Well, let me get Mr. Bernero, who follows that very closely.

Mr. BERNERO. My name is Robert Bernero. I am director of the Office of Nuclear Material Safety and Safeguards.

The site characterization plan by the Department of Energy is the plan by which they would gather all the information for a licensing application. They have prepared that plan, submitted to us that plan. We have reviewed it. We are in the final stages of preparing our comments to give to DOE, and those comments will be given by the end of this month.

Then, presumably, DOE will undertake site characterization to do the geologic and other investigations to gather the information you are talking about, including, of course, information on the volcanic issue.

Senator BREAUX. How close are you to being on schedule?

Mr. BERNERO. We are on our review schedule all right. The real difficulty with the site characterization plan is actually undertaking the work. There is a variety of obstacles to that. Some of them are internal to the Department of Energy—that is, having proper management controls in place—and there are also obstacles in obtaining permits to conduct the work. They have to drill holes and dig trenches and sink shafts, do things like that, and they need local permits for that.

Senator BREAUX. Has that been a problem to receive those?

Mr. BERNERO. Yes, it has been a problem for the Department of Energy.

Senator BREAUX. Are those applications in litigation in general?

Mr. BERNERO. I cannot answer that. I would have to defer to DOE for that.

Senator BREAUX. All right, thank you gentlemen.

I am sorry, Senator Simpson. Did you have another comment?

Senator SIMPSON. Mr. Chairman, I want to state what I think is obvious, that here you have two Senators as chairman and ranking who believe in commercial nuclear power. You are going to face the House in your new duties as chairman, and over there they have people that really do not like nuclear power at all. You are going to go through some wrenching times over there.

Senator Moynihan represents a State with a large option of nuclear power. I remember so well the day he asked that question. I remember that. It comes out in some humor now, but we were all stunned at the answer, that nobody knew that the guy with the actual hands on responsibility was not even close to a salary level that we thought he would have been given the level of responsibility he had.

I would just conclude my thoughts that the people of America do not know you, and they will have no way to know you until something happens, and then they will come to know you well.

Joe Hendrie was right out there where you were, and he did his level best, and it was monstrous. And if Harold Denton had not been on the scene, it would have been an extraordinary reaction.

You are not going to be able to go dig up Harold Denton every year during every incident or every transaction or transient. If you do, you might make it. If you do not, you will not be able to avoid—and that is all I am saying to you—you will not be able to avoid, when the heat is on, coming to you, and one of you is just going to finally say, "I don't agree at all, and I have been saying that for 5 years, or 4 years, and I told them they were crazy."

That is what you are going to get, and forget all the other. I am not trying to be evil or nasty or cute. I really hate to see good people that I have come to know go through that. I know Jim Curtiss. That guy can fight off the snakes in any arena or anywhere. I am not worried about him.

But I worry about good people who come to government and, in the situation of the terrible drama of it, are just going to get scissored because they will come back and they will have staff members going through everything you have done and saying, You said that on such-and-such a day, you said that and nothing happened, and you know that they should have done something, and you are just going to say, "Yes, but I couldn't say anything."

So you're going to get it; I am not going to get it. That is what I am saying. I don't know any reason why you would want to continue. It is working well now. Let's say it is. I will give you the benefit. You are doing things. But when that time comes, it is going to be a very difficult one for you as human beings, and when we get through with the acid rain debate and the greenhouse effect debate, guess where we will be. Looking right back at the nuclear option, and you are going to have to be gearing up in ways that you will not be able to gear.

Those are some things that I share, and good luck. You will not receive tender, loving care like this in your rounds when there is another transient, I can assure you, and this dais will fill up. That is all I am saying.

Mr. CARR. I appreciate that, sir. You realize our entire job is to make sure that transient does not happen.

Senator SIMPSON. Well, yes, but it will, because the stuff gets older, and the older it gets, and with no maintenance, I can promise you it will.

Mr. CARR. Those plants are getting maintenance.

Senator SIMPSON. Well, I agree with the chairman. If they are getting it, why don't you put it in there, in a reg, and get it right?

Senator BREAUX. I appreciate the Commission being up here, and it is in the intent, following up on Senator Simpson's comments, that we are going to move quickly on this legislation. Hopefully, before the time that we have completed clean air, and, hopefully, before the time we have completed global warming, we will have in place a legislated, mandated program of how the agency will be run which will prevent it from being attacked in the way that I think Senator Simpson has expressed very, very well.

I thank the Commission very much for being here.

Mr. CARR. Thank you, sir.

We would like to welcome up at this time, representing an industry panel, speaking on behalf of a number of representatives of the industry, Mr. Joe Farley.

I would like to welcome Mr. Farley, serving as Executive Vice President for Nuclear for the Southern Company in Birmingham. Mr. Farley, we are delighted to have you here representing a number of your colleagues and speaking on their behalf on this legislation.

I am pleased to receive your testimony. I note that it is quite extensive. If you would like to summarize it, we would appreciate your doing that.

STATEMENT OF JOSEPH M. FARLEY, EXECUTIVE VICE PRESIDENT, NUCLEAR, THE SOUTHERN CO.

Mr. FARLEY. I would be pleased to, Mr. Chairman, and will do so.

Mr. Chairman and members of the committee, I would like to thank you for this opportunity to appear before you today in connection with S. 946.

I currently serve, as you noted, as Executive Vice President, Nuclear, for the Southern Company, in which capacity I have the overall responsibility for providing management and technical services for the nuclear power plants in the Southern Company's system.

In addition, I am chairman of the board of directors of the American Nuclear Energy Council, ANEC, and my testimony is presented on behalf of ANEC, the Edison Electric Institute, and the Nuclear Management and Resources Council, or NUMARC.

As a preliminary matter, we would like to express our appreciation for the time and attention that this subcommittee has devoted to the central issue raised by the legislation that you, Mr. Chairman, and Senator Simpson have introduced. That is the best way to structure the agency which is charged with the regulation of our civilian nuclear power industry.

We believe that the focus on whether the NRC's current structure permits it to discharge its responsibilities effectively and efficiently, and in a manner that promotes more direct accountability, is appropriate and is timely.

In its present form, the NRC has been managing the nuclear regulatory program for over a dozen years. The regulatory program itself is now some 35 years old, and both the regulatory program and the agency are confronted by serious challenges, a number of which were summarized in the statements which both of you made upon the introduction of S. 946.

We understand the desire to consider whether organizational and other reforms are needed and whether they will bring about worthwhile improvements and advance public safety. We welcome the opportunity to share our views with you.

The foremost concern of our industry is that any change to the NRC structure is compatible with safety interests. Coupled with this is the clear recognition that if we are to have a viable nuclear power program, we must assure that there is an effective and credible Federal nuclear regulator. The nuclear industry's broad-based efforts to upgrade performance itself through self-improvement are not intended to supplant regulation but to complement it and therefore advance nuclear safety goals.

We had and continue to have some reservations with certain elements of the legislative proposal that was fashioned last year and again lies before us. We want to be certain that you and other members of the subcommittee clearly understand our pledge to continue working with you in a constructive manner to fashion and improve regulatory structure.

Certainly the most far-reaching of the organizational proposals contained in this bill are the provisions that would replace the Commission with a single administrator. While the full burden of NRC's operational problems cannot be solely attributed to its management structure, there is no avoiding the fact that the agency has been repeatedly frustrated by the Commission's structure.

The nuclear industry has looked long and hard at the question of the most appropriate NRC management structure. In the last Congress, we brought to your attention reports prepared for the Edison Electric Institute entitled, A Report on the Management Structure of the Nuclear Regulatory Commission Prepared for the Edison Electric Institute. That analysis gives some of the issues, most of the issues raised by the legislative proposal. I would like to submit a copy of this report and we commend it to you.

Mr. Chairman, it should be clear from the following discussion which I will give what the position of our industry is on the proposal to convert the NRC into an Executive Branch agency headed by a single administrator. In short, we have concluded that such a change is in the best long-term interest of this Nation's civilian nuclear regulatory program and that legislation accomplishing this objective should be supported.

I would like to briefly outline for you our analysis of the key arguments for and against the single-administrator concept that have been debated both within the industry and elsewhere.

As for the positive side of the single administrator for the regulatory management, there are some distinct advantages that we believe are evident. One is improved management. A single administrator who alone would possess full responsibility and authority for agency operations, we believe, would be able to manage the agency

more effectively and make decisions on a more timely basis than a commission in which authority and responsibility are diffused.

This was the conclusion, as you pointed out earlier, of the post-TMI Kemeny and Rogovin studies, both of which recommended scrapping the commission format at NRC for that of a single administrator. This is even more true today, we believe, as timely decisionmaking is essential for an agency focused more on regulating the safe operation of nuclear plants than licensing what was once a new technology.

Second, improved and more timely policy formation would be, we think, enhanced. A further criticism made by post-TMI studies was that the Commissioners failed to effectively control regulatory policymaking. Faced with the interpersonal and institutional obstacles inherent in arriving at consensus positions, including the Sunshine Act, which Senator Simpson referred to, the Commission in too many cases confronts the dilemma by long delays or letting policymaking fall by default to the NRC staff.

Third, clear accountability. A third major deficiency of the current NRC structure—and, from a public policy standpoint, perhaps its most disturbing one—is that, by diffusing responsibility, it diffuses accountability. As contrasted to the current collegial situation, where no one individual is in charge, a single administrator—and the President who appoints that official—would be fixed with unmistakable accountability for agency performance. In government as well as in business, experience tells us that accountability is a powerful motivator.

We would like to make recommendations for additional changes to the legislation that I will briefly outline at this point.

First, we believe there must be appropriate transitional provisions in the legislation in order to assure continuity in agency operation and regulatory functions. For example, the act abolishes the NRC and creates the new Nuclear Safety Agency during a 6-month period beginning on July 21 of this year, as the President may direct, but in any event no later than January 21, 1990.

We are concerned that, in the event the Senate fails to act on a Presidential appointee within this time period, the NRC will be abolished, the new agency will be established; yet the agency will not have its single administrator. To cover such a contingency, we recommend the legislation provide that the official serving as the NRC chairman become acting administrator of the agency pending assumption of office by the new administrator.

The legislation should clearly state that the acting administrator has the authority and responsibility to assure that pending proceedings are evolved as previously scheduled and not delayed. It is essential, we believe, that the legislation make plain that the Congress expects the agency to continue to discharge its duties during the transition period.

Further, we recommend that provisions be included in S. 946 requiring the Commission to establish an expedited schedule for resolution of all pending licensing proceedings within 60 days of the date of enactment. This will assure that pending licensing proceedings are not disrupted as a result of the transition from the Commission to the Nuclear Safety Agency. The Commission has used expedited schedules heretofore to resolve licensing proceedings.

Second, we believe that the legislation should extend the recognized benefits of clear and direct regulatory accountability to the nuclear plant licensing process. The current licensing process involves an almost total separation between the promulgation of licensing regulations, which is done by the Commission, and interpretation of those regulations, which is largely done by the panels of the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board.

The Atomic Safety and Licensing Board was created after the 1962 Atomic Energy Act amendments. On balance, we believe the licensing boards have worked well to ventilate disputes and create evidentiary records as the basis for decisions.

The Appeals Board was created in 1969 by the Atomic Energy Commission to function as an intermediate tribunal in an era when construction permit applications reached to the hundreds, and operating license applications were expected to follow in the same numbers. As a case management tool, if nothing else, the Appeals Board was probably necessary at that time.

Since 1975, the Commission's sole responsibility has been nuclear regulation, with developmental responsibilities being exercised elsewhere. In short, we believe there are considerable questions today as to the need for the Atomic Safety and Licensing Appeals Board as a practical management tool for the agency.

Instead, Mr. Chairman, we believe there is merit to the proposition that decisions made by panels of the Safety and Licensing Board be reviewable directly by the Commission under the proposed legislation to the administrator for final regulatory resolution.

We hope the subcommittee gives careful consideration to the proposal as a way to restore responsibility and accountability to the agency's licensing function as well as to regulatory functions.

In our testimony before you in the last Congress, we discussed various legislative proposals that would have transferred the functions undertaken by the Office of Investigations to a statutory inspector general. At that time, we expressed the view that the Office of Investigations performs functions for the Commission that are integral to the agency's exercise of its licensing and regulatory responsibility.

We believe that the Commission or the administrator must not be deprived of the authority to set the priorities for, and exercise control over, OI's investigative resources. It goes without saying that this includes the responsibility and accountability for the proper discharge of such authority.

Although, for most of its existence, OI has reported directly to the Commission, we believe that the current reporting regime is working, given proper leadership and staff. For this reason, we are not convinced that there is a need to address this issue by statute. However, if Congress feels it is important to act on legislation to establish OI as a statutory office, we believe that the provisions contained in S. 946 are a basis for a sound approach.

Again, we do have some suggestions for specific additions to the language of S. 946, and we fully discuss them in my prepared statement and are prepared to review in more detail if desired by the committee at a later time.

The creation of a Nuclear Reactor Safety Investigations Board is another matter we would like to comment upon. The creation of a Nuclear Reactor Safety Investigations Board has been one of the most difficult issues that the industry has addressed with regard to S. 946.

We strongly believe that responsibility for nuclear power safety regulation should reside in a single regulatory body, one which possesses the authority, the resources, and the expertise to discharge its safety mandate and is accountable to the various political branches of the government.

In our view, the establishment of other agencies or functionaries with independent, cross-cutting, or overlapping missions is a prescription for divided authority, contention, confusion in safety matters, and regulatory instability. Inconsistent or confusing signals could be given which could detract from safety, and we agree with Chairman Carr in that regard. The point is not that the industry cannot support the aim of assuring objectivity in the investigation of nuclear safety events, because that is simply not the case.

While we do not believe that a nuclear safety board is necessary for the purpose of assuring objective investigation, if Congress chooses to create such a board, we urge that any enabling legislation contain the following points:

One, make the board part of the nuclear regulatory agency and accord the administrator authority to assure that the board's efforts complement rather than conflict with the agency's regulatory responsibilities.

Second, confine the board's functions to safety investigations.

Third, set criteria for triggering safety investigations.

Fourth, shape the office as a directorate rather than a board, since a single director will be more able to conduct safety investigations with more speed and vigor than a board.

Last, assure that the technical resources of the nuclear regulatory agency will not be duplicated or diluted. Such a board should have a small professional staff, we believe, to provide investigative leadership, with the detailing of experts from the regulatory agency or elsewhere for the balance.

In our view, S. 946 meets some, but not all, of the five criteria noted above. First, the board, while established as an independent office, is structured within the Nuclear Safety Agency in a way that will facilitate the necessary communication between its staff and the rest of the agency. We believe that it does that.

Second, the board's functions are appropriately limited to fact-finding accident investigations. Any role beyond that threatens to create a "shadow NRC" and erode confidence in the new regulatory agency, and create the type of regulatory confusion that can actually detract from, rather than enhance, safety.

Third, the bill does establish statutory criteria that define "significant safety event" in order to focus the attention of the board on incidents that genuinely merit safety investigations.

Unfortunately, we also believe that the bill fails to satisfy the fourth and fifth criteria, which we listed above. As stated previously, we believe that this office should be structured as a directorate rather than a board. The central foundation for legislative proposals to replace the Commission with a single-administrator agency is

a belief that a single administrator or director is more responsive and accountable than a commission. If this is true with respect to nuclear safety regulation, it is equally true with respect to nuclear safety investigations.

We also believe that the large permanent staff of the board is inappropriate, and that the proportions envisioned between permanent staff and consultants and seconded personnel should be considered.

Because of the complexity of commercial nuclear power facilities and the mix of skills required to design, construct, and maintain such facilities, it is impossible to know in advance which areas of expertise will need to be brought to bear on any particular event that warrants investigation. While such skills are available in an agency such as the Nuclear Safety Agency, with its several thousand personnel, it is unlikely that the necessary skills would be available in the permanent board staff.

With these thoughts in mind, we believe what is needed is a permanent staff that would provide investigative leadership. The investigation leadership could be augmented as needed by personnel from the agency or consultants from outside the agency. This approach should provide the necessary expertise to conduct the safety investigations with confidence.

In conclusion, the American public has demanding expectations of the nuclear energy programs, and rightly so. It expects exemplary operational performance from the nuclear energy industry, effective oversights by its regulators, and a regulatory process which is supportive of both requisites.

The nuclear industry is fully committed to meeting its performance obligations through individual efforts and the collective efforts represented by INPO, by EPRI, and by NUMARC.

Effective regulation requires both a workable agency organization structure and a sensible regulatory process, one matched to safety requirements, technical capabilities, and the Nation's needs. In our view, legislative changes will be necessary to bring this about.

We also believe that a revival of the nuclear energy option for this country will require action on several fronts. Of course, the industry must justify public confidence by safe, effective, and economic operation of existing commercial nuclear energy plants. Utilities must also work, as many are now doing today, with major suppliers, with the Department of Energy, and the NRC to develop new, advanced designs that are more passive and less costly.

We believe that licensing reform and standardization of plant design are vital as well, and we are concerned about such matters as a second post-construction hearing. We believe that, ultimately, on the licensing and standardization, legislation will be necessary. And, of course, the waste management problem must be resolved.

We welcome the opportunity to submit our views on S. 946 and offer our continued cooperation in your further deliberations.

Thank you.

Senator BREAUX. Thank you very much for your statement, Mr. Farley. I think it is very helpful, I think it is very constructive, and even where you disagree, you have made some constructive suggestions as to how it may be improved, and I appreciate that.

Let's talk a little bit about the maintenance question. You heard the discussions we had with the Commission previously. Do you agree that it would be almost impossible to come up with a set of maintenance rules for the plants because we have so many plants?

Mr. FARLEY. My thoughts are basically these, Mr. Chairman. As was pointed out, there are about 110 or 111 operating units at this point in time. We have in the Southern Company system six plants located at three sites. Basically, those six units come into three categories. It would be very difficult for us to have an overall maintenance rule for those units. Now, we have a maintenance—and, we think, a good maintenance plan—for each of those three sites. They are twin units at the Vogtle site, twin units at——

Senator BREAUX. How was that maintenance plan devised?

Mr. FARLEY. It was devised by us and reviewed by, and it is being constantly reviewed by the NRC in two fashions, both as to the adequacy of the maintenance plan at each plant and the adequacy of the implementation of that plan.

Senator BREAUX. So, in each one of your plants, you have a maintenance procedure that is part of your company policy.

Mr. FARLEY. That is right, absolutely.

Senator BREAUX. That maintenance rule was arrived at by consulting, I take it, with the manufacturers of that plant plus your own technical experts and professionals.

Mr. FARLEY. That is right, and, of course, taking into consideration the tech specs for each of those plants and all that goes with that.

Senator BREAUX. Now, my question is, what is wrong with taking that maintenance procedure that is already in existence for each one of your plants, which the NRC has reviewed, and saying that this is going to be a requirement that the regulatory agency will ensure is being followed by the people who run the plants? That is all we are talking about.

Mr. FARLEY. Well, the point——

Senator BREAUX. You say you are doing it, and I respect that, and I am sure you are. But what is wrong with saying that, in the interest of safety, the person who licensed you shall see to it that you are in fact following the maintenance procedures that you participated in devising?

Mr. FARLEY. Well, we have no problem with that because we are there talking about the maintenance plan, which is in essence a maintenance rule for us, at each of those three sites. But those plans at each of those three sites have to be different because of the technology and the difference at each one.

Senator BREAUX. There is no problem with that.

Mr. FARLEY. Now, the NRC—and they have just completed at one of our, in fact at two of our three within the last month, they have completed a maintenance review by the NRC staff and, as I say, addressing whether we have an adequate plan, whether it is current and up to date, and whether we are implementing it, so that in essence the NRC is doing that.

Where we have a problem is to take those three plans and try to meld them into one.

Senator BREAUX. We are not talking about that. Each plant would have different maintenance procedures.

Mr. FARLEY. Well, I am not sure you can generalize.

Senator BREAUX. You don't use the maintenance plan that is applicable for a 727 on a 747.

Mr. FARLEY. Well, that is correct, and it certainly is sensible.

Senator BREAUX. The only thing we are suggesting is once the maintenance plan is devised for each particular plant—and each one of them is different in some aspects—that the regulatory agency that grants you a license should have the authority to see to it that you are, in detail, following that maintenance plan. You say you are.

Mr. FARLEY. We have no problem with that, and in fact the NRC is overseeing that right now.

Senator BREAUX. Well, then, why do you oppose, or do you oppose, the NRC publishing a final rule requiring that that be done?

Mr. FARLEY. Well, the problem is that what the NRC was engaged in preparing was a composite of requirements for all the 110 or 111 units in one plan, in essence.

Senator BREAUX. Would you not agree that for all of the plants there are basic, essential ingredients that would be similar in all of them?

Mr. FARLEY. Well, there are some things that would be similar. They would be in categories that would be similar, though one of the plagues of our industry in the United States is the lack of standardization. This is a plague that has been a bother and continues and will continue to be until we can get a new generation of standardization.

So there is a lot of diversity, and our problem has been that the kind of rule that has been proposed and that we have looked at has been insisting on trying to merge all of this together, which would create a paper——

Senator BREAUX. I take it then from that point—and I understand what you are saying—I take it from that point that what you are telling me is not that you do not have a problem with the NRC having a maintenance rule that affects each plant, but rather, you object to the way that they were trying to go about doing it, which would be a blanket maintenance rule for all of the plants.

Mr. FARLEY. Yes, right, and with enormous paper record-keeping problems that would have required the addition of countless employees at each plant for the documentation of each jot and tittle.

Senator BREAUX. Well, you say you are doing that already.

Mr. FARLEY. We are doing that, but the way they were going at it was going to require a great deal more documentation which we felt was unnecessary for an adequate maintenance plan to be implemented.

Senator BREAUX. All right. So your objection is not to the concept of requiring a rule that would establish a maintenance procedure for the plants to follow that would be supervised by the NRC, but rather the objection is to how they were trying to go about doing it?

Mr. FARLEY. We have felt that, basically, the current NRC approach, which was to insist upon our having a maintenance plan at each plant, and their then reviewing that—and, of course, not only having a plan but having an implementation approach—the two

things are both equally necessary. It does not do you any good to have a plan if you are not implementing it properly.

So the focus on that—we believe the NRC is currently doing that. We have within our own industry, through the Institute of Nuclear Power Operations, an extensive review of each plant's maintenance, and while that is a self-improvement and an internal matter, we think it is very complementary to what the NRC's regulatory approach is, which is to examine regularly and to make either recommendations or criticisms to us about what we are doing right and what we are not doing right.

Senator BREAUX. On behalf of the industry, do you object to the Nuclear Regulatory Commission having the authority to have in place a maintenance plan that they would have the responsibility to guarantee is being carried out according to the dictates of that plan?

Mr. FARLEY. Well, when you say a plan, I need to know what that was, because again——

Senator BREAUX. The plan would be a plan that would be developed by the manufacturers of the facilities, the operators and owners of the facilities, with input from the NRC.

Mr. FARLEY. I would have a problem if there were one plan that tried to encompass——

Senator BREAUX. Not one plan, I am talking about a specific plan designated for each particular plant.

Mr. FARLEY. Well, then it is not a plan; then it is 111 plans.

Senator BREAUX. It is a plan for each particular plant. If you have 2,000 plants, you have 2,000 plans. If you have two plants, you have two plans.

Mr. FARLEY. Well, I am not sure, Mr. Chairman, that I understand the difference, then, between what is being done now——

Senator BREAUX. There is a vast difference. The vast difference is that the agency that gives you the license would be in charge of guaranteeing to the American public that this maintenance procedure is being carried out. That is the basic difference. Do you support that or do you oppose that?

Mr. FARLEY. I have a problem in understanding how the agency could have a plan that would encompass 111 or 2,000 different individual ones.

Senator BREAUX. Let me give you an example. On every airplane that flies in America, there is a maintenance manual that the owner and operator of that airplane has to fill out on a regular basis. That maintenance book is looked at by the FAA to see if it is being carried out. They can do random inspections and they look at the reports. That is what we are talking about.

I think what I am hearing from you on behalf of the industry—and correct me if I am wrong—is that you are doing your maintenance, you think you are doing it properly, we hope you are doing it properly, but you do not want the agency that grants you the license to have any supervisory jurisdiction over whether it is, in fact, being done.

Mr. FARLEY. No, sir. I believe that the agency should have supervisory jurisdiction over our maintenance, and I think they should have the right to review and to disapprove, if they see fit, the maintenance plan which is in effect a maintenance rule for us that

has been developed with the manufacturers and with due notice and with due input from the regulatory requirements that are there for all the technical specifications that are a part of our license, and we think it entirely appropriate that the NRC have supervision over whether that plan is adequate and whether it is being carried out. We believe they must have that jurisdiction. We have no quarrel with that whatsoever.

The problem that we have is one—I guess it would come down to this—it is how you do it. We do not object to the NRC having that kind of regulatory control. What we have heard from the NRC over a long period of years as this has been discussed is as to the kind of maintenance rule as against a maintenance policy that the NRC wants to put together.

Now, certainly a maintenance policy, if you want to call it a policy, and sometimes I am not sure of the difference between a rule and a policy, in a sense——

Senator BREAUX. It is a major difference. If you violate the policy, they will say you are a bad guy; if you violate the rule, you could be penalized and fined, and if it is bad enough, people can go to jail. It is a big difference.

Mr. FARLEY. The reason I say what I have said, and I understand the distinction that you are making, but if the NRC in its regulation and in its supervision over us disapproves of that maintenance plan that has been before them for review, and it is constantly before them—they have the right for inspections; they have the right to review the records on whether we have done those things that are called for; they have that right, and they exercise that right. They are very thorough about it.

So if there is a policy which says every plant must have it, or a rule that says every plant must have an adequate maintenance plan which is reviewed by the Commission, I think that is where we are right now. The NRC is reviewing it, does hold us accountable, and does and could well say your maintenance is unsatisfactory, and they can close us down if it is.

But if the maintenance rule of the sort that has been discussed over this period of time does what continually they have been trying to do, which is to give, we feel, too much of an overall melding together of the 110 or 111 units into one set of requirements, we think the result of what they were proposing before was devastatingly cumbersome and not in the interest of a safety program.

Senator BREAUX. We are not advocating that.

Mr. FARLEY. What I would like to do, Mr. Chairman, at some point it might be useful if we brought before this subcommittee, or before individual members of it, a group from our industry who have worked extensively in this area, who are not dogmatically opposed to the NRC having control over our maintenance practices—we are not opposed to that—but to have them sit down with you and spend some time reviewing why the NRC's proposal to us was unworkable and yet at the same time explaining to you what we are doing, what the NRC is doing, and maybe some method of approaching this both to you and to——

Senator BREAUX. I think it has to be done. I do not think you have any problems with where I am coming from.

Mr. FARLEY. We would welcome——

Senator BREAUX. I do not advocate one blanket maintenance. That would be ridiculous. I mean, no one would advocate that. What I am advocating is that there should be a maintenance plan for each plant that has been licensed by the NRC. It should be tailored to the particularities of that plant.

Mr. FARLEY. Yes.

Senator BREAUX. And it should be enforced by the NRC. That is all I am advocating.

Mr. FARLEY. There are, for example, a great many similarities between various Westinghouse pressurized water reactors that are of a certain size, and we have some categories like that. We have a lot of input from the vendors on what should be done. But we would like to sit down with you and to see if we can give a more full explanation of that. We would welcome that opportunity.

Senator BREAUX. I would hope that we do not have to legislate that they publish a final maintenance set of rules and regulations. But I feel very strongly about it; I think the Congress would basically agree with that. They are going to do it voluntarily or we are going to try to get them to do it.

Mr. FARLEY. One of the problems that I want to be sure we do agree on, I heard the comment made earlier about plants operating without maintenance or with no maintenance plan. I think the NRC sees to that today, that that is not the case, and that even those plants where maintenance has been criticized, they have maintenance plans, and those plans are reviewed, and if criticized, they have got to be repaired as a plan and made satisfactory to the NRC. We have no problem with that.

Senator BREAUX. With regard to the safety board, your testimony indicates your opposition to the creation of the board and makes some suggestions, however, if we do go forward with the safety board, how you would recommend that it would be amended.

The main concept, I think, that the committee's legislation is trying to get to is that, in the event of a significant event, that there is some independent group that can look at it to determine what happened.

Mr. FARLEY. Yes.

Senator BREAUX. And it may be the fault of the NRC that this incident happened. My point, and I think the point of the majority of the members, is that it is difficult for the employees of the NRC to ever find fault with the NRC if that is the cause of this significant incident. Therefore, the concept is to set it apart from the NRC so they can look at the manufacturer, they can look at the operator, they can look at the maintenance, and they can look at the rules of the NRC and say this is what caused this event.

Mr. FARLEY. Yes, sir.

Senator BREAUX. Do you have any problems with that concept?

Mr. FARLEY. Yes, I have this problem with it. I recognize what you say, and I think there is a weighing of advantages and disadvantages in the concept.

We see in the wording of the bill, the provisions of the bill, with three Presidential appointees who would serve 3-year terms as members of this board, and we see from past experience, as Chairman Carr pointed out, that in the last couple of years there have

been really just a handful of situations that have come up that would meet the kind of threshold that the bill specifies.

Three Presidential appointees with up to 55 people. We see with that the almost human-nature problem of having this group of three appointees, with provision for party differentiation on them, and I am not criticizing that as a concept, but with that group of three and the administrator over here, and this group not necessarily having all that much to do—and, of course, our objective is to see to it that they would have nothing to do; that is the ultimate objective—but if they are sitting here as full-time employees, and with a staff of some size, what are they going to be doing?

I think, inevitably, there will tend to be an adversarial relationship develop between that group and the NSA itself. I think that is just human nature. We think that with that, then, the lack of coordination, for example—and this again is something that Chairman Carr pointed out—if a matter is being investigated by the board, and the NRC decides, yes, there is something that should have been covered by our regulations or by some rulemaking, and we ought to take action now, there needs to be coordination between that investigation board, on the one hand, and the administrator on the other so that the NSA could go ahead promptly and take action if it is needed.

If the investigation board is outside the purview of the administrator, I think you would have a problem in that kind of coordination. One of the thoughts that has crossed my mind about it is that there are some precedents for having such a board be a part-time board rather than a full-time board. I think the creation of this group as such is a bit unwieldy, it is a bit overstaffed, and I think—actually, I believe that the Commission itself, through the exercise of the present investigation board that is there now, which is the—I think it is referred to as the AEOD, the Analysis and Evaluation of Operational Data—but that AEOD group, we think, has done an effective job for the Commission and for the interest of safety.

I recognize what you say about the independence, but at the same time, there has to be some coordination. Just as I feel the single administrator is better than five collegial people, I think that accountability and a unified effort at safety—I would not be suspicious of the administrator. I do not think that most of the people that I would think of that would be candidates for that job would be the kinds of people who would want to cover up their own tracks. I realize again that is human nature, that maybe all of us tend to do that. But I am afraid, as I pointed out in my testimony, that the creation of the board in the present form rather than as a directorate within the agency will sow the seeds for lots of problems down the road.

Senator BREAUX. I appreciate your comments. I think your suggestion perhaps on having a board when we are moving the Commission from a commission of five to a single administrator, that the safety board should in fact perhaps not be a board—it perhaps may be a single person—makes some sense.

But you talk about this lack of cooperation or coordination. We can learn from history. There is a National Transportation Safety Board. Is there any evidence that when they go out and investigate

a plane crash or some other serious major incident that there is not adequate coordination between their determining what caused this accident and getting that report back to the FAA for future action?

Mr. FARLEY. I am not aware that that has been a significant problem.

Senator BREAUX. I would say that it has not been. There has not been a single complaint by the FAA, which is a regulatory body, that the NTSB investigating accidents has caused them any problems. And the thing that they find many times is that the NTSB finds fault with the FAA because they did not issue the proper regulation, they did not issue the proper maintenance schedule, that they have the independent authority to say, "FAA, you have messed up and directly contributed to this accident."

My point is very simple. I doubt whether someone who works for the NRC is going to feel very comfortable with looking at a major incident at a plant and turning around and blaming the people that they work for.

Mr. FARLEY. Well, this is one of the reasons that, in our testimony, we suggested what would be an assistant administrator assigned to this function, or this directorate, who would report directly to the administrator himself rather than to anything else.

Senator BREAUX. He is still reporting to his boss. It is like my staff going out and investigating something and turning it around and saying, "Breaux, you messed up; it is your fault this happened." They are not likely to do that. I employ them; I hired them; I pay their salary.

And that is what we are saying. That is the situation I think you are advocating, is that the people who work for them would be independent enough to turn around and blame the boss. It is not going to happen.

Mr. FARLEY. Of course, the corporate world that I come from, where I have been for some 20 years the chief executive officer of a utility company, I have been the one who—we have had mistakes, we have had things go wrong, we have had bad judgment about individual people who have done something that—stolen money, for example.

I am responsible because I am there at the top, and it has been my experience that the people who are at the second level in our company were people that would not be at the second level if they were not willing to investigate and to admit the problem. If they had not been, I don't want them at that level.

Senator BREAUX. Mr. Farley, how many people that are, say, a junior executive in your company would look at something and turn around and say, "It's Farley's fault. He really messed up, and let me tell you, Mr. Farley, you are doing a lousy job." Do you think they are going to do that?

Mr. FARLEY. Well, we have had things that have pointed to the fact that I have on occasion done some things that we should not have done. We ordered four nuclear units back about 1972 that we had to cancel and write off the books, and I wish we had not done it. That was me.

Senator BREAUX. Yes, but I doubt whether——

Mr. FARLEY. Our staff came and said, "Mr. Farley, there is no way we can pay for those units." So we cancelled them. That is me. I had to be responsible for that.

Now, I realize, I am not arguing with the principle of what you are saying. I understand that, and it is human nature not to want to be at least overly critical of the boss. I understand that. But I am concerned, also, over another aspect of human nature, which is that you set this group over here, and they don't have a lot to do, and they are looking at this group on the other side, and there is going to tend to be ultimately, I think, in this instance, rivalry.

I am as much concerned over the fact that these three Presidential appointees with that staff will not have that much to do, and Lord knows we all hope they do not, but if it works along as it has been working for the last several years, with no more than a couple of events each year that need investigation, they are going to jump in there and be looking for something to have fun with.

Senator BREAUX. That is why we are trying to restrict it to significant accidents.

Mr. FARLEY. Yes. Well, I commend the wording of the legislation and that restriction. I do think that that has been done appropriately, and I realize it. But I am concerned, as I have expressed.

Senator BREAUX. Well, I appreciate your testimony on behalf of all the industry. I think it has been helpful. I think it has been presented in a cooperative spirit, and I appreciate that very much. I think you made some good points and some very valid suggestions. I do not necessarily agree with all of them, obviously. We have differences on the safety board. We have probably some differences on the maintenance question, which perhaps is more of a terminology than an ultimate goal.

I appreciate your support of the single administrator, and I think we will look very carefully at your other suggestions and see whether we can incorporate some of them, and thank you for your appearance.

That will conclude this morning's testimony. As I indicated, it is the intent of the committee to move fairly quickly with regard to the legislation. That will conclude this hearing, and we have no other hearings planned on the legislation, so the committee will stand adjourned until further call of the Chair.

[Whereupon, at 11:59 a.m., the subcommittee recessed, to reconvene at the call of the Chair.]

[Statements submitted for the record and the bill, S. 946 follow:]

PREPARED TESTIMONY
SUBMITTED BY
UNITED STATES NUCLEAR REGULATORY COMMISSION

TO THE

SUBCOMMITTEE ON NUCLEAR REGULATION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

CONCERNING
S. 946, THE "NUCLEAR REGULATION REORGANIZATION
AND REFORM ACT OF 1989"

PRESENTED BY
KENNETH M. CARR
CHAIRMAN

SUBMITTED: JULY 19, 1989

Mr. Chairman, Members of the Subcommittee, my fellow Commissioners and I are pleased to appear before you today to discuss S. 946, the "Nuclear Regulation Reorganization and Reform Act of 1989". Title I of this proposed legislation would replace the Commission with the Nuclear Safety Agency headed by a single administrator, establish an independent Nuclear Reactor Safety Investigations Board, and provide for a statutory Office of Investigations that would report to the single administrator. Title II contains various miscellaneous amendments.

The majority of the Commission does not support S. 946 for reasons that we will specify in our discussion of key elements of the legislation.

Single Administrator

As you are aware, with the recent conclusion of Chairman Zech's term the five-member Commission now has only four members. The Commission is evenly divided on the concept of transforming the Nuclear Regulatory Commission into an agency headed by a single administrator. Commissioner Rogers and I oppose restructuring the NRC into an agency headed by a single administrator; Commissioners Roberts and Curtiss support the single administrator concept.

Commissioner Rogers and I are not convinced that a restructuring of the NRC is warranted or would lead to any major improvement. The NRC is operating efficiently and effectively and can continue to do so provided the Chairman

provides strong leadership and receives responsible suggestions and support from the other Commissioners.

In our view, as the primary focus of the Commission changes from the licensing of new plants to the challenges posed by emerging safety issues from aging plants, policy decisions would still benefit from the experience and talents of a diverse Commission membership. Moreover, the safety decisions on the evolving new generation of light water reactors and advanced reactor designs will benefit from a diversity of views. The Commission form of governance lends stability to regulation and policy in an otherwise shifting and highly-charged regulatory environment. Commissioner Rogers and I are further convinced that the Commission's collegial structure does not unduly prolong decision-making, nor do we subscribe to the view that the Sunshine Act presents insurmountable obstacles to our ability to act as a collegial body.

In our opinion, the change to a single administrator may result in only small enhancements in administrative efficiency which we have essentially achieved by reaffirming the Chairman's authority to manage the routine, day-to-day administration of the agency. In other adjudicatory and rulemaking roles the advantage of the diversity of background afforded by the five-member Commission approach outweighs the disadvantages.

Commissioners Roberts and Curtiss reach a different conclusion. While they are satisfied that the Commission is successfully carrying out its mission, they believe that the agency could be more efficiently managed under the leadership of a single administrator. In their view, creation of a single administrator

agency should result in increased responsibility and accountability at the top of the agency. They believe this can assist the agency in meeting its mandate to protect the public health and safety. While Commissioners Roberts and Curtiss recognize that a commission-type organization assures that there will be a diversity of technical and professional opinion considered before decisions are made, they believe that under a single administrator regime this will continue since the agency's staff will present diverse technical and professional judgments to the administrator. Additionally, they believe that the agency's rulemaking and adjudicatory proceedings, which involve extensive public participation, assure that the single administrator would be amply exposed to a wide range of views on all significant issues.

Relationship of the Restructured Agency to the Office of Management and Budget

Although the Commission is divided on the merits of establishing a single administrator agency, we unanimously and vigorously advocate that a restructured agency must have the independence to make public health and safety judgments. The majority of the Commission does not believe that S. 946 provides that necessary independence.

Currently, the Commission is not subject to Office of Management and Budget (OMB) regulatory oversight. Thus, with the exception of legislation and testimony that are budget-related, the NRC does not submit its legislative correspondence or testimony to OMB for clearance. The NRC also does not submit its draft proposed or final rules to OMB for review, except

where the rule contains information collection requirements falling within the purview of the Paperwork Reduction Act. If OMB disapproves the information collection requirement, by majority vote the Commission can nonetheless impose the requirement. Thus, OMB does not conduct a substantive review of any NRC rule.

Under S. 946, this would change. OMB would clear all of the agency's legislative proposals, its testimony, and its comments on specific legislation. OMB would also review the agency's draft proposed and final rules under a statutory prescribed time schedule. The legislation states that the OMB review would not diminish the agency's authority to promulgate rules.

The majority of the Commission finds the approach embodied in S. 946 to be unacceptable. For the agency to have the independence to make necessary health and safety judgments, the agency should continue to have the same relationship with OMB that the Commission now has. This means that the Office of Management and Budget would not be authorized to review proposed agency regulatory policy determinations, including draft proposed or final rules. In other words, the restructured organization should continue to carry out its regulatory mission as an independent agency.

Elimination of the Executive Director for Operations Position

S. 946 would eliminate the position of the Executive Director for Operations. The majority of the Commission cannot support this provision because it is desirable that the statute provide for the appointment of a senior career civil servant to assist the Administrator in the management of day-to-day staff activities.

Establishment of a Statutory Office of Investigations

S. 946 would establish a statutory Office of Investigations (OI) headed by an Assistant Administrator for Investigations. The Assistant would report directly to the Administrator. The majority of the Commission sees no need for Congress to mandate that the Assistant Administrator report only to the Administrator. Although for several years OI reported directly to the Commission, currently, the Director, Office of Investigations reports to a Deputy Executive Director for Operations. Based on our experience, we believe OI can function effectively without reporting directly to the Administrator.

Establishment of a Nuclear Reactor Safety Investigations Board

The majority of the Commission believes that the creation of a separate independent investigations board is inconsistent with the justification for creating a single administrator. The incentives often cited for a single administrator are to centralize authority and enhance accountability at the top of the agency; however, this provision diffuses responsibility and accountability. For example, an independent fact-finding Board would likely lead to a duplication of existing agency functions and result in multiple government spokesmen on the causes and significance of incidents. The Board's activities might also hinder the Administrator from acting effectively in the event of an incident. The Administrator might be hesitant to take enforcement action or impose new regulatory requirements during the pendency of the Board investigation.

Moreover, since 1985 the NRC's Incident Investigation Program has been demonstrated to be effective and objective. The program has been assured sufficient independence through oversight by the Office for Analysis and Evaluation of Operational Data. This office has no responsibilities for licensing, inspection or enforcement. Results of this program of investigations have been used for feedback regarding plant-specific performance, generic issues, and feedback into the NRC's regulatory process.

The NRC Incident Investigation Program generates two investigatory responses based on the safety significance of the operational events. Both are provided by an NRC team put together to determine the circumstances and causes of an

operational event. For an event of potentially major significance, an Incident Investigation Team (IIT) is established by the Executive Director for Operations. There have been three IITs since the program was formed. The investigation of less significant operational events is conducted by Augmented Inspection Teams (AIT).

Under S. 946 a Nuclear Reactor Safety Investigation Board would investigate incidents at nuclear power reactors that meet the same criteria as the Commission now uses to classify events as "abnormal occurrences". For the last eight years there have been an average of seven such incidents each year, but for each of the past two years there have only been three such incidents. This reduction in abnormal occurrences is consistent with overall improvements in performance as seen through the performance indicators monitored by the NRC. None of the last six events could be classified as particularly significant incidents. Therefore, based on current trends, the workload of the Board might be exceedingly light.

In this regard, based upon our three comprehensive and indepth IIT investigations, we estimate that a reasonable budget for each investigation would be on the order of two full-time equivalent employees (FTE) plus $35,000 administrative costs and $100,000 contractor and consultant costs. Thus, based upon the improvement performance trends and our cost data, it appears that the authorized personnel ceiling for the Board of 55 FTE, 12 full-time equivalent consultants and its annual budget of $5.5 million would be excessive.

Under S. 946, the three members of the Board would be nominated by the President and confirmed by the Senate. The majority of the Commission believes

that the Board members should be appointed by the Administrator rather than the President. This would reduce the number of political appointees, an important consideration in ensuring that the agency has the necessary independence to make the necessary health and safety judgments.

While the Commission believes that the Nuclear Reactor Safety Investigations Board must be given sufficient independence to operate successfully and effectively within the regulatory agency, S. 946 gives the Board too much independence. The Board should have the authority to initiate an investigation (after consultation with the Administrator), determine how an investigation should be conducted, and reach its own independent findings. However, the Board should be subject to limited supervision by the Administrator to ensure that the Board's efforts do not unnecessarily duplicate the Nuclear Safety Agency's efforts and that its product is submitted to the Agency in a timely fashion.

If the Board is conducting more than one investigation at a time, the Administrator should be authorized to establish the Board's priorities so that the investigation that is most important from a regulatory perspective is completed first. Because the Board's investigations will provide important information for the Agency's regulatory decisions, it is also essential that the Administrator be able to suggest a schedule for the submission of the Board's report to the Agency. Furthermore, the Administrator should have the authority to request the Board to provide periodic status reports, including preliminary findings.

Finally, the Administrator must be able to supervise interaction between the Board and the Office of Investigations. We do not believe that the functions of the Board are intended to include investigations of wrongdoing, but evidence touching on wrongdoing could be uncovered in the course of the Board's activities. In such cases, coordination between OI and the Board may be required.

Construction Authorization for Nuclear Waste Repository

Under S. 946 the technical members of the Licensing Boards that would preside over the high-level waste repository licensing proceeding would be appointed by the Administrator from among those nominated by the Nuclear Waste Technical Review Board. The Commission has no objection to this provision.

TITLE II--Miscellaneous Provisions

We would also like to briefly address three of the miscellaneous proposals set forth in Title II.

Storage and Disposal of Greater than Class C Low-Level Waste

The proposed bill also contains a provision that confuses present National policy on the disposal of Greater Than Class C (GTCC) waste. The present law makes disposal of GTCC waste a Federal responsibility, and the NRC has concluded in rulemaking that such waste should be disposed of in the geologic repository for high level waste unless the Department of Energy proposes an alternative and the NRC licenses it. Section 203(b) of the bill confuses the issue by providing that Agreement States may license the disposal of GTCC wastes on an equal basis. Agreement State sites may now dispose of wastes on a case-by-case basis under special conditions for such waste at the lower end of the spectrum of activity. It is not likely, however, that Agreement States will have the resources to dispose of the bulk of GTCC wastes that have activity levels in excess of that which can be disposed of safely in near surface disposal facilities. Accordingly, we recommend that the straightforward policy of the Low Level Radioactive Waste Policy Amendments Act of 1985 be adhered to, that GTCC waste should be disposed of by the Federal Government as a matter of national policy, with Agreement State disposal of only small quantities under special circumstances, as presently allowable.

Section 203(b) would also subject DOE to agency licensing for storage of commercial GTCC waste. Presently, DOE is not subject to licensing for storage of such waste. In coordination with the Commission, DOE is working on a program to accept such wastes for storage pending decision on disposal. A provision for licensing such storage could effectively delay the implementation of a needed program.

Quarterly Report on Implementation of the Nuclear Waste Policy Act

Section 204 would require the Administrator to submit to Congress a quarterly report on the implementation of the Nuclear Waste Policy Act. If such a report is to be required, we recommend that it be an annual report. The Department of Energy provides an annual report to Congress on its high-level waste program, and we perceive no justification for the NRC to prepare reports more frequently than DOE does. If a quarterly report is to be mandated, we request the deletion of section 204(b) which calls for an accounting of funds expended during the quarter. NRC's current accounting system is not set up to provide the data on a quarterly basis and to establish such a system would impose an unreasonable administrative burden. Under the Commission's Memorandum of Understanding with DOE regarding reimbursement of the NRC from the Nuclear Waste Fund, the NRC provides DOE with such data on an annual basis.

West Chicago Thorium Tailings Site

Section 205 provides that the Nuclear Safety Agency may not designate a permanent disposal site for the tailings at the West Chicago site until the agency has studied alternative sites to determine the safest site available to store such wastes. Any need for this amendment has been overtaken by events. The NRC staff recently published a Supplemental Final Environmental Impact Statement which examines various alternatives to Kerr-McGee's proposal for

onsite disposal of these tailings. The staff determined that none of the alternatives are superior to licensee's proposal. The adequacy of the proposed approach is the subject of a hearing before an Atomic Safety and Licensing Board. Should the Licensing Board determine the proposed approach is not adequate, it has ample authority to modify or reject Kerr-McGee's proposal. Moreover, the State of Illinois has recently asked the NRC to enter into an agreement with it pursuant to section 274 of the Atomic Energy Act which would grant the State regulatory authority over the tailings. As a result, in the foreseeable future, the responsibility for approving a disposal method may reside with the State of Illinois, rather than with the Nuclear Safety Agency.

NRC's Legislative Proposals

On February 2, 1989 the Commission submitted to Congress the proposed Omnibus Nuclear Power Safety and Security Enhancement Act of 1989 which contained several legislative proposals. We encourage the Congress to enact this legislation promptly. We particularly need a provision included in that legislative proposal which would permit us to obtain administrative search warrants in limited circumstances. Recently a vendor under investigation had a fire which destroyed documents this agency needed to assist it in determining whether commercial grade parts used in nuclear power plants were defective. This vendor is suspected of providing counterfeit or substandard parts. If we had had the authority to obtain an administrative search warrant from a court, we would have been able to obtain the documents before destruction.

We appreciate the Committee's consideration of the Commission's views on this important proposed legislation. Mr. Chairman, this concludes our testimony.

STATEMENT OF JOSEPH M. FARLEY

EXECUTIVE VICE PRESIDENT - NUCLEAR

SOUTHERN COMPANY

ON BEHALF OF THE

AMERICAN NUCLEAR ENERGY COUNCIL

EDISON ELECTRIC INSTITUTE

AND THE

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

BEFORE THE

UNITED STATES SENATE

SUBCOMMITTEE ON NUCLEAR REGULATION

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

CONCERNING S. 946

THE NUCLEAR REGULATION REORGANIZATION AND REFORM ACT OF 1989

JULY 19, 1989

Mr. Chairman and members of the Subcommittee, I would like to thank you for the opportunity to appear before you today to discuss S. 946, the "Nuclear Regulation Reorganization and Reform Act of 1989". I currently serve as the Executive Vice President-Nuclear for The Southern Company, in which capacity I have the overall responsibility for providing management and technical services for the nuclear energy plants in the Southern system. In addition, I am Chairman of the Board of Directors of the American Nuclear Energy Council (ANEC), and my testimony is presented on behalf of ANEC, the Edison Electric Institute (EEI), and the Nuclear Management and Resources Council (NUMARC).

INTRODUCTION

As a preliminary matter, we would like to express our appreciation for the time and attention that this Subcommittee has devoted to the central issue raised by the legislation that you, Mr. Chairman, and Senator Simpson have introduced, that is, how best to structure the agency charged with the regulation of our civilian nuclear power industry. We believe that the Subcommittee's focus on whether the Nuclear Regulatory Commission's (NRC) current structure permits it to discharge its responsibility effectively and efficiently, and in a manner that promotes more direct accountability, is appropriate and timely.

The NRC, in its present form, has been managing the nuclear regulatory program for over a dozen years; the regulatory program itself is now some thirty-five years old; and both the regulatory program and the agency are confronted by serious challenges -- a number of which were summarized in the statements you both made

upon the introduction of S. 946. We understand, therefore, the desire to consider whether organizational or other program reforms are needed and, if so, whether they will bring about worthwhile improvements -- ones that will advance nuclear safety and further the regulatory program as a whole. We welcome the opportunity to contribute our views.

During the 100th Congress, the nuclear industry provided the Subcommittee with certain principles as well as its specific comments on a number of legislative reorganization proposals then pending. And, although you have asked for our views on only one "omnibus" proposal, the fact that it both raises and addresses many of the issues we previously evaluated have led us to utilize those same principles in the development of our testimony today.

The foremost concern of the nuclear industry is that any change to the NRC structure is compatible with safety interests. Coupled with this, is the clear recognition that, if we are to have a viable nuclear power program, we must assure that there is an effective and credible federal nuclear regulator. The nuclear industry's broad-based efforts to upgrade performance through self-improvement and to aggressively pursue industry-wide operational excellence -- efforts that I am intimately aware of given my past service as Chairman of the Institute of Nuclear Power Operations (INPO) -- are not intended to supplant regulation but to complement it and thereby advance the safety goals which this Nation's citizens and the nuclear energy industry share.

Mr. Chairman, we had, and continue to have, reservations with certain elements of the legislative proposal that was fashioned last year and again lies before us. We want to be certain that you, and other Members of this Subcommittee, clearly understand our pledge to continue working with you in a constructive manner to fashion a regulatory structure which both incorporates the "lessons learned" over more than three decades and which will serve the Nation well in the challenges ahead.

ANALYSIS OF PROPOSED ORGANIZATIONAL CHANGES - S. 946

CREATION OF AN EXECUTIVE AGENCY HEADED BY A SINGLE ADMINISTRATOR

The most far-reaching of the organizational proposals contained in S. 946 are the provisions contained in Subtitle A of Title I that would replace the commission format of management at the NRC with that of a single administrator. While the full burden of the NRC's operational problems cannot be solely attributed to its management structure, there is no avoiding the fact that the agency has been repeatedly frustrated by the evident limitations which that structure imposes.

As the Subcommittee well knows, the nuclear industry has looked long and hard at the question of the most appropriate NRC management structure. In the last Congress, we brought to your attention a series of three reports, prepared in 1984 and 1985 for the Edison Electric Institute by Marcus A. Rowden, a former Chairman of the Nuclear Regulatory Commission. The first report examined the history of the NRC structure and the resulting managerial problems; the second report scrutinized the arguments

supporting and opposing an independent regulatory commission structure for the NRC and the major management alternatives; and the third report analyzed issues raised by a change from a five member commission structure to one of a single administrator.

We believe that these reports, which were combined into a single volume, entitled A Report on the Management Structure of the Nuclear Regulatory Commission Prepared for Edison Electric Institute, serve as an excellent tool for analyzing some of the issues raised by the proposal that is the subject of today's hearing. For this reason, I would like to submit a copy of this report for the hearing record.

Mr. Chairman, it should be clear from the following discussion what the position of our industry is on the proposal to convert the NRC into an Executive Branch agency headed by a single administrator. In short, we have concluded that such a change is in the best long-term interest of this Nation's civilian nuclear regulatory program and that legislation accomplishing this objective should be supported.

I would like to briefly outline for you our analysis of the key arguments for and against the single administrator concept that have been debated both within the industry and elsewhere.

ARGUMENTS FOR A SINGLE ADMINISTRATOR

The single administrator form of regulatory management offers several distinct advantages over a commission structure.

(1) Improved Management. Replacing the five-member Commission with a single administrator, most observers agree, would significantly improve the agency's management. A single

administrator, who alone would possess full responsibility and authority for agency operation, would be able to manage the agency more effectively and take decisions on a more timely basis than a commission in which authority and responsibility are diffused. This was the conclusion of the post-TMI Kemeny and Rogovin studies, both of which recommended scrapping the commission format at NRC for that of a single administrator. The evolving demands on NRC resources also reinforce the need for improved management, since timely decision-making is essential for an agency that is focused more on regulating the safe operation of nuclear power plants rather than the licensing of what was once a new technology.

(2) Improved and More Timely Policy Formulation. A further major criticism made by post-TMI studies, including one conducted by the GAO, was that the Commissioners failed to effectively control regulatory policymaking. Faced with the inter-personal and institutional obstacles inherent in arriving at consensus positions -- including Sunshine Act restrictions -- the Commission in too many cases confronts the dilemma by either inordinate delay or by letting policymaking fall by default to actions of the regulatory staff on a case-by-case basis.

(3) Clear Accountability. A third major deficiency of the current NRC structure -- and, from a public policy standpoint, perhaps its most disturbing one -- is that, by diffusing responsibility it diffuses accountability. As contrasted to the current collegial situation, where no one individual is in charge, a single administrator -- and the President who appoints

that official -- would be fixed with unmistakable accountability for agency performance. And in government as well as in business, experience tell us that accountability is a powerful motivator and safeguard.

ARGUMENTS AGAINST A SINGLE ADMINISTRATOR

We would like to examine several major concerns that have been expressed about single administrator management for the NRC.

(1) Loss of Diversity. A major argument advanced for the commission structure is that it provides for diversity in decisionmaking and policymaking. Proponents contend that the controversial nature of nuclear issues warrants a collegial body to reflect differing viewpoints. But as Senator Simpson once pointed out, "the value of bringing diverse views to bear, in a collegial context, on the licensing and regulatory issues facing the Commission, has all but been hopelessly lost." That judgment is supported by the stated experience of both present and past Commission members -- individuals whose service spans virtually the entire lifetime of NRC. Moreover, as the post-TMI Rogovin report declares:

> "The desire for 'diversity' in part mistakes what we believe to be the proper roles for the regulatory agency, the Executive and Congress in our nuclear safety programs. We do not believe the proper function of the Commission or administrator should be to consider and resolve competing public attitudes about nuclear power in every individual safety decision that is made. It is precisely this hidden pressure that has played an important role in paralyzing the Commission in the past few years. Decisions about the ultimate safety objective in the regulatory program, and about the expansion or reduction of our country's reliance on nuclear power -- decisions which inevitably involve a balancing of the risks against the benefits of this technology -- should ultimately be made by the Executive and the

Congress, as part of the Nation's overall strategic energy policy."

(2) Public Visibility. It has also been argued that a single administrator would reduce the public visibility of the policymaking process. A single administrator, clearly, would not be subject to the strictures of the Sunshine Act. We hardly think this decisive in terms of the openness of the regulatory process. NRC rulemaking would continue to be conducted under the public notice and comment procedures mandated by the Administrative Procedure Act. Moreover, the licensing and regulatory process, as a whole, would still be as open as it is today to public scrutiny. Licensing issues would continue to be aired in public hearings; technical issues would continue to be ventilated in public meetings of the agency and of its Advisory Committee on Reactor Safeguards; the agency's practice of making virtually all of its papers publicly available would still continue; and, of course, the Freedom of Information Act would continue to apply. We would fully expect, furthermore, that Congressional oversight would continue to be vigorous and ongoing. In short, the nuclear regulatory process would remain the most open and visible process pursuant to which the government's business is conducted.

(3) Regulatory Program Stability. There is a third major concern about a single administrator structure -- the resulting potential for instability in the regulatory program since agency management and policies would be subject to change with each new administration. The concern should be tempered, however, by a recongnition of the practical constraints on radical change.

Those constraints are inherent in the Presidential appointment and Senate confirmation process, in the massive regulatory infrastructure which (experience shows) changes slowly when at all, and in the continuity of the professional staff that conducts the agency's day-to-day business. Moreover, we know full well that stability is not a necessary corollary of collegial regulatory management. Nonetheless, we take seriously the underlying basis for this concern and believe that this issue should be given careful consideration in examining the consequences of the proposed organizational change.

We would like to make some recommendations for additional changes to Subtitle A that we will briefly outline and be pleased to discuss them further with you at the appropriate point.

First, we believe that there must be appropriate transitional provisions in the legislation in order to assure continuity in agency operation and regulatory functions, should the process of appointment and confirmation of an Administrator not be completed prior to the time the Act becomes effective. For example, the Act abolishes the NRC and creates the new Nuclear Safety Agency during a six-month period beginning on July 21 of this year, as the President may direct, but in any event no later than January 21, 1990. We are concerned that in the event the Senate fails to act on a Presidential appointee within this time period, the NRC will be abolished, a new agency will be established in its wake, yet the agency will not have a single administrator. To cover such a contingency, we recommend the

legislation provide that the official serving as NRC Chairman become Acting Administrator of the agency, pending assumption of office by the new Administrator. This would help ensure an orderly transition from the Commission to the new agency.

Further, we recommend that provisions be included in the bill to require the Commission to establish expedited schedules for resolution of all pending licensing proceedings within 60 days of the date of enactment. This will assure that pending licensing proceedings are not disrupted due to the transition to the Nuclear Safety Agency. Importantly, the Commission has used expedited schedules to resolve licensing proceedings.

It is essential that the legislation contain appropriate provisions to make plain that the Congress expects the agency to continue to discharge its duties during the transition process. For example, the legislation should clearly state that the Acting Administrator has the authority and responsibility to assure that pending proceedings are resolved as previously scheduled and not delayed. Regulatory gridlock and chaos must be avoided if we are to continue to make effective progress in regulatory reform.

Second, we believe that the Subcommittee should give careful consideration to a proposal that has recently been discussed in the nuclear industry that would extend the recognized benefits of clear and direct regulatory responsibility and accountability to the nuclear plant licensing process. The current licensing process involves an almost total separation between the promulgation of licensing regulations, which is done by the Commission, and application and interpretation of those

regulations, which is largely done by panels of the Atomic Safety and Licensing Board and Atomic Safety and Licensing Appeal Board.

Indeed, it can take a long time for a dispute between parties over the application of NRC regulations -- or any other issues necessary to a licensing decision -- to go through administrative appeals and reach the Commission itself. The Commission is even further isolated from the licensing process when contentions that reach an Appeal Board panel are remanded by that panel back to the Licensing Board for further consideration or additional hearings. A sort of regulatory "ping pong" takes place in isolation from officials appointed by the President and confirmed by the Senate to make and enforce the rules of nuclear safety. Although the Commission can "reach down" and take jurisdiction of an issue when it wishes, it has proven extremely reluctant to do so.

The Atomic Safety and Licensing Board was created after the 1962 Atomic Energy Act Amendments. On balance, we believe the Licensing Boards have worked well to impartially ventilate disputed issues and create solid evidentiary records as the basis for decisions.

The Appeal Board was created in 1969 by the Atomic Energy Commission to function as an intermediate tribunal in an era when construction permit applications reached to the hundreds and operating license applications were expected to follow in the same numbers. As a case management tool, if nothing else, the Appeal Board was probably necessary at that time. Moreover, the AEC -- which had developmental as well as regulatory

responsibilities -- was able to utilize the Appeal Board as a mechanism that would obviate the need for direct Commission involvement in licensing decisionmaking, thus lessening the Commission's exercise of conflicting responsibilities.

Since 1975 the Commission's sole responsibility has been nuclear regulation, with developmental responsibilities being exercised elsewhere. In short, we believe there considerable questions as to the need for the Atomic Safety and Licensing Appeal Board as a practical management tool. It can be argued that today it only serves to isolate the Commission from the workings of the licensing process.

Instead, Mr. Chairman, we would believe there is merit to the proposition that decisions made by panels of the Atomic Safety and Licensing Board be reviewable directly by the Commission -- or, under the proposed legislation -- to the Administrator -- for final regulatory resolution.

We hope the Subcommittee gives careful consideration to this proposal as a way to enhance responsibility and accountability to the agency's licensing function as well as regulatory functions.

CREATION OF A STATUTORY OFFICE OF INVESTIGATIONS

Mr. Chairman, in our testimony before you in the last Congress, we discussed various legislative proposals that would have transferred the functions undertaken by the Office of Investigations to a statutory Inspector General. At that time, we expressed the view that the Office of Investigations performs functions for the Commission that are integral to the agency's

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exercise of its licensing and regulatory responsibility and noted with approval the statement of then-Chairman Zech that:

> "OI investigations are often important elements in our regulatory decisions and in our confidence in the adherence of licensees to requirements. By nature of its mission, OI must work closely with the NRC regulatory staff. An effective working relationship between OI and the staff is important because OI does not make judgments regarding public health and safety --instead it produces investigatory information which is useful to those who are responsible for making regulatory decisions."

Given the regulatory realities expressed by the Chairman, realities that are as true today as they were then, we believe that the Commission, or the Administrator of the proposed NSA, must not be deprived of the authority to set the priorities for and exercise control over OI's investigative resources. It goes without saying that this includes the responsibility and accountability for the proper discharge of such authority.

Subsequent to our testimony in the last Congress, the Statement of Managers on the Conference Report of H.J.Res. 395, the Continuing Resolution for Fiscal Year 1988, directed the NRC to reorganize the Office of Investigations. The Commission has subsequently acted upon this direction, and while maintaining the integrity of the Office, has altered its reporting relationship in a manner the Commission apparently believes both satisfies the directive of Congress and suits the needs of the Commission for "an effective working relationship between OI and the staff."

Although for most of its existence OI has reported directly to the Commission, we believe that the current reporting regime is workable, given proper leadership and staff. For this reason, we are not convinced that there is a need to address this issue

by statute. However, if the Congress feels that it is important to act on legislation to establish OI as a statutory office, we believe that the provisions contained in Subtitle B of S. 946 form the basis for a sound approach.

Again, we do have some suggestions for specific additions to the language of the bill as introduced that we understand to be consistent with the your intent and would appreciate the opportunity to review them with the Subcommittee. In essence, our suggestions involve two clarifications of what we believe are encompassed by the current provisions of Subtitle B. The first clarification involves what we understand to be within the ambit of the Administrator's inherent supervisory authority over staff offices. Specifically, we do not read the bill as limiting the authority of the Administrator to establish mechanisms providing for closer coordination between the regulatory and investigative staffs.

For example, in the fall of 1987 the Commission established an Investigations Priority Review Group, made up of senior regulatory staff and the Director of the Office of Investigations. Unlike the earlier Investigations Referral Board, which was designed to determine whether a particular issue should be investigated and which was criticized in Congress and subsequently disbanded, this newer group was designed to engage the regulatory and investigative staff in discussions that lead to a common understanding of which investigations initiated by OI should have the highest priority.

Given the limited resources of OI, we believe, as did the Commission, that this serves a useful function in helping OI best serve the Commission's overriding health and safety mandate. It is worth noting that the current Director of the Office of Investigations agreed with the need for this type of interaction with the regulatory staff in testimony before this Subcommittee in the last Congress. In any event, we read subsection (a) of the proposed new Section 205A as preserving this type of arrangement and would ask your support in clarifying this issue.

Second, and perhaps on an even more technical note than the last, we read the provisions allowing the Administrator to "prohibit" a particular investigation for overriding health and safety issues to encompass some lesser action, such as a delay or suspension of an investigation. We do not believe that it was your intent to establish an "all or nothing" scenario for the Administrator, as we understand you to have accepted the argument of the Commission that the "head" of the regulatory agency had to maintain certain authority in this regard given the fact that the expertise of the OI staff is largely related to the conduct of criminal investigations, not the safe regulation of nuclear power plants. In any event, we would appreciate clarification.

CREATION OF A NUCLEAR REACTOR SAFETY INVESTIGATIONS BOARD

As you might expect, next to the proposal to abolish the NRC and create in its stead the NSA, the provisions contained in Subtitle C of S. 946, which would create a Nuclear Reactor Safety Investigations Board has been one of the most difficult issues

that the industry has tried to achieve consensus on in the context of your legislative proposal. As a guiding bedrock principle, we strongly believe that responsibility for nuclear power safety regulation should reside in a single regulatory body -- one which possesses the authority, resources and expertise to discharge its safety mandate and is accountable to the political branches of government for the exercise of that mandate.

In our view, the establishment of other agencies or functionaries with independent, cross-cutting or overlapping missions is a prescription for divided authority, contention, confusion in safety matters and regulatory instability. Inconsistent or confusing signals can detract from safety. The point is not that the industry cannot support the aim of assuring objectivity in the investigation of nuclear safety events, because that is simply not the case. Rather, we want to reinforce with you our concern that a great deal of care must be taken, when considering whether it is appropriate to establish by legislation what I will refer to as a "safety board function", that these issues are carefully thought through.

While we do not believe that a nuclear safety board is necessary for the purpose of assuring objective investigation, if Congress chooses to create such a board, we urge that any enabling legislation:

- o Make the board part of the nuclear regulatory agency and accord the Administrator sufficient supervisory authority to assure that the board's efforts complement rather than conflict with the agency's regulatory responsibilities;

- o Confine the board's functions to investigative fact-finding, causal determination and reporting thereon;

- o Establish criteria for triggering safety investigations -- to assure a focus on matters of true safety significance;

- o Establish the office as a directorate rather than a board. A single director will be able to conduct safety investigations with more speed and vigor than a collegial body; and

- o Assure that the technical resources of the nuclear regulatory agency will not be duplicated or diluted. Such a board should have a small professional staff to provide investigation leadership, with the detailing of experts from the regulatory agency or elsewhere to fill particular investigations needs.

In our view, S. 946 meets some, but not all, of the five criteria noted above. First, the board, while established as an independent office, is structured within the Nuclear Safety Agency in a way that will facilitate the necessary communication between its staff and the staff of the rest of the agency. In addition, the bill includes provisions designed to delineate the differences between the purposes and execution of a safety investigation conducted by the board from the regulatory responsibilities of the rest of the agency. In particular, there is a requirement that the board consult with the agency administrator before initiating a safety investigation. Although there is no requirement that the administrator concur in the investigation, this consultation should improve the coordination between the board and the agency. Moreover, the requirement that the board issue a written determination before initiating an investigation should further improve coordination.

Second, the board's functions are appropriately limited to "fact-finding" accident investigations. Any role beyond this threatens to create a "shadow NRC", erode confidence in the new

regulatory agency, and create the type of regulatory confusion that can actually detract from, rather than enhance, safety.

Third, the bill establishes statutory criteria that define "significant safety event" in order to focus the attention of the board on incidents that genuinely merit safety investigations.

Unfortunately, we also believe that the bill fails to satisfy the fourth and fifth criteria listed above. As stated previously, we believe that this office should be structured as a directorate rather than a board. The central foundation for legislative proposals to replace the Commission with a single administrator agency is the belief that a single administrator or director is more responsive and accountable than a commission. If this is true with respect to nuclear safety regulation, it is equally true with respect to nuclear safety investigations. In safety investigations there is no need for collegial deliberation since the objective is to develop the facts, to understand them and to communicate them --and to do this as quickly and as accurately as possible. Vesting this function in a single individual would avoid the known disabilites of a collegial body -- diffusion of authority, lessened efficiency and delay.

We also believe that the large permanent staff of the board is inappropriate, and that the proportions envisioned between permanent staff and consultants and seconded personnel should be reordered. Since the bill includes statutory criteria for safety investigations, the number of incidents which will be subject to investigation will vary from time to time. Moreover, the complex nature of the events being investigated will require differing

kinds of expertise. Because of the complexity of commercial nuclear power facilities and the mix of skills required to design, construct, operate, and maintain such facilities, it is impossible to know in advance which disciplines will need to be brought to bear on any particular event warranting investigation. While such skills are available in an agency such as the Nuclear Safety Agency, with its several thousand personnel, it is unlikely the appropriate skills would be available in the permanent board staff.

In addition to the difficulty of having the appropriate disciplines available within the board on a permanent basis, there is the real concern that such highly qualified personnel might not have sufficient duties or responsibilities throughout the year and, more important, would not have the type of interchange with their professional colleagues which is necessary to remain on top of developments in the field. Moreover, the lack of challenging work assignments between investigations would prove to be a significant disincentive to the retention of the type of highly motivated employee needed to conduct meaningful investigations. With these thoughts in mind, we believe that what is needed is a permanent staff designed to provide investigation leadership. The investigation leadership could be augmented, as needed, by personnel from the Nuclear Safety Agency or consultants from outside the agency. This approach should provide the necessary expertise to conduct the investigations of significant safety events.

OTHER REGULATORY PROVISIONS

We have serious objections to the proposed amendments to Section 206 of the Energy Reorganization Act of 1974 which are contained in Section 201 of S. 946. We believe that Section 206 of the 1974 Act and the implementing NRC regulations (10CFR Part 21) already provide an adequate framework for requiring reports of noncompliance with NRC safety requirements or defects which could create substantial safety hazards. Under current law, officers of firms that knowingly and willfully fail to comply with NRC rules and standards are subject to civil penalties. However, this proposal would remove the "knowing and willful" standard and extend sanctions to firms. The industry questions the fairness of legislation imposing large civil sanctions on firms for nonreporting without a finding of willful misconduct.

We are also concerned about the impact that the proposed enlargement of exiting Section 206 would have on sub-tier suppliers to the nuclear industry. During the past decade, there has been an increasing disposition of sub-tier suppliers to reduce or cease their participation in the nuclear equipment supply market because the marginal relationship of such activity to their main lines of business does not justify the added burdens to which they are subjected and the potential liability to which they are exposed. This decrease in the sub-tier supplier group adversely impacts the viability of the nuclear energy program, the availability of adequate and competitive sources of supply and nuclear safety in general. The proposed enlargement of the scope of Section 206, the increased reporting

requirements it would bring and the liability it would impose for unknowing reporting omissions can only further deter these firms from participation in the nuclear supply market. In short, we believe this amendment will not improve the safe operation of nuclear plants, and believe it could prove counterproductive.

CONCLUSION

The American public has demanding expectations of the nuclear energy program -- and rightly so. It expects exemplary operational performance from the nuclear energy industry; effective oversight by its regulators; and a regulatory process which is supportive of both requisites.

The nuclear industry is fully committed to meeting its performance obligations, through individual efforts and the collective efforts represented by INPO, EPRI, and NUMARC.

Effective regulation requires both a workable agency organizational structure and a sensible regulatory process -- one matched to safety requirements, technical capabilities, and the nation's needs. In our view, legislation will be necessary to bring this about.

We also believe that a revival of the nuclear energy option for the country will require action on several fronts. Of course, the industry must justify public confidence by safe, effective, and economic operation of existing commercial nuclear energy plants. Utilities must also work, as many are doing today, with major suppliers, DOE, and the NRC to develop new advanced designs that are more passive and less costly. We

believe that licensing reform and standardization of plant design are vital as well, which will ultimately require legislation.

Mr. Chairman and members of the Subcommittee, we are hopeful that by addressing this legislation, you are embarked on the kind of Congressional action that will restore nuclear energy as a viable option to meet growing electric demand in the next decade.

II

101ST CONGRESS
1ST SESSION

S. 946

To reorganize the functions of the Nuclear Regulatory Commission to promote more effective regulation of atomic energy for peaceful purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, JANUARY 3), 1989

Mr. BREAUX (for himself, Mr. SIMPSON, and Mr. BIDEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To reorganize the functions of the Nuclear Regulatory Commission to promote more effective regulation of atomic energy for peaceful purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Nuclear Regulation Reorganization and Reform Act of 1989".

TITLE I—REORGANIZATION AND REFORM OF NUCLEAR ENERGY REGULATION

Subtitle A—Nuclear Safety Agency

DECLARATION OF PURPOSES

SEC. 101. The Congress declares that—

(a) a clear and coordinated national policy for the development, use, and regulation of atomic energy for peaceful purposes, in accordance with the objectives of the Atomic Energy Act of 1954, as amended, is in the best interest of the general welfare and the common defense and security of this Nation; and

(b) to best achieve these objectives, improvements in the effectiveness of the current approach to the regulation of atomic energy for peaceful purposes are required.

DEFINITIONS

SEC. 102. For the purpose of this Act—

(a) the term "Agency" means the Nuclear Safety Agency established under section 103; and

(b) the term "Administrator" means the Administrator of the Nuclear Safety Agency appointed under section 104(a).

ESTABLISHMENT OF NUCLEAR SAFETY AGENCY

SEC. 103. (a) There is hereby established the Nuclear Safety Agency (hereinafter in this Act referred to as the "Agency"). The Agency shall succeed the Nuclear Regulatory Commission in existence on the day before the effective date of this Act.

(b) There are transferred to the Agency all of the functions of the Nuclear Regulatory Commission.

(c) For purposes of title 5 of the United States Code, the Agency is an independent establishment in the executive branch of the Government.

(d)(1) The Administrator shall keep the Committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the functions of the Agency, fully and currently informed with respect to the activities of the Agency.

(2) For the purpose of any review by the Office of Management and Budget of any Agency rule or regulation, the following procedures shall apply:

(A) For each Agency rule or regulation reviewed by the Office of Management and Budget, the Office shall establish a public docket and shall include in such docket the following information:

(i) copies of all written material received by the Office concerning the Agency rule or regulation under review that originates from persons who are not employees of the Federal Government; and

(ii) a list of all meetings and all other communications, including oral communications, with persons who are not employees of the Federal Government concerning the Agency rule or regulation under review.

(B) The Office of Management and Budget shall inform the Administrator of all scheduled meetings with persons who are not employees of the Federal Government concerning any Agency rule or regulation under review by the Office and shall provide the Agency with a reasonable opportunity to attend such meetings.

(C) The Administrator shall place in the rulemaking record for any nuclear regulation reviewed by the Office of Management and Budget the following information:

(i) copies of all drafts of any proposed or final rule submitted to the Office for review;

(ii) copies of all written materials pertaining to any proposed or final rule submitted to the Office for review; and

(iii) a written explanation of the specific reasons for any significant changes made by the Agency in the draft of any proposed or final rule submitted to the Office for review as a result of such review.

(D) The time for review of Agency rules or regulations by the Office of Management and Budget shall not exceed sixty days following receipt of such submission by the Office. The time for review may be ex-

tended for good cause by the Office for an additional thirty days. Notice of any such extension, together with a succinct statement of the reasons therefore, shall be placed in the rulemaking record.

(E) Nothing in this Act alters in any manner—

(i) rulemaking authority vested by law in the Agency to initiate or complete a rulemaking proceeding or to issue, modify, or rescind a rule or regulation; or

(ii) the criteria for rulemaking applicable under other statutes.

OFFICERS

SEC. 104. (a) The Agency shall be administered under the supervision and direction of an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) There shall be in the Agency a Deputy Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall prescribe.

(c)(1) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following: "Administrator, Nuclear Safety Agency.";

(2) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following: "Deputy Administrator. Nuclear Safety Agency.";

(3) Section 5313 of title 5, United States Code, is amended by striking "Chairman, NRC";

(4) Section 5314 of title 5, United States Code, is amended by striking "Member, NRC"; and

(5) Section 5315 of title 5, United States Code, is amended by striking "Executive Director for Operations, Nuclear Regulatory Commission".

ABOLITION OF NUCLEAR REGULATORY COMMISSION

SEC. 105. The Nuclear Regulatory Commission is hereby abolished. Sections 201(a)–(g) and 209 of the Energy Reorganization Act of 1974, as amended, are repealed.

TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL

SEC. 106. The personnel employed and the assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available, or to be made available, in connection with the Nuclear Regulatory Commission and the functions transferred under this Act, are, subject to section 1531 of title 31, United States Code, transferred to the Agency for appropriate allocation.

EFFECT ON PERSONNEL

SEC. 107. (a) The transfer of personnel pursuant to this title shall not cause any employee to be separated or reduced in grade or compensation.

(b) Any person who, on the day before the effective date of this title, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Agency to a position having duties comparable to those performed immediately preceding his appointment, shall continue to be compensated in his new position at not less than the rate provided for his previous position for the duration of his service in this new position.

INCIDENTAL TRANSFERS

SEC. 108. The Director of the Office of Management and Budget, at such time or times as the Administrator shall provide, may make such determination as may be necessary with regard to the transfer of the Nuclear Regulatory Commission pursuant to this title and the transfer of functions under this title, and to make such additional incidental disposition of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available, or to be made available in connection with the Nuclear Regulatory Commission and the functions transferred under this title, as may be necessary to carry out the

provisions of this title. The Director of Management and Budget shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

SAVINGS PROVISIONS

SEC. 109. (a) All orders, determinations, rules, regulations, permits, grants, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, the Nuclear Regulatory Commission, or any court of competent jurisdiction, in the performance of functions which are transferred under this title; and

(2) which are in effect at the time this title takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, revoked, or repealed in accordance with law by the President, the Administrator or other duly authorized official, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this title shall not affect any proceeding, petition, or application for a license or other form of permission or approval pending at the time this title takes effect before the Nuclear Regulatory Commission with respect to functions transferred under this title, but such pro-

ceedings, petitions, and applications, to the extent that they relate to functions so transferred, shall be continued before the Agency. Decisions shall be issued with respect to such proceedings, applications, or petitions, appeals shall be taken therefrom, and payments shall be made pursuant to such decisions, as if this title had not been enacted. Decisions issued with respect to such proceedings, applications, or petitions shall continue in effect until modified, terminated, superseded, revoked, or repealed by the Administrator or other duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding, petition, or application under the same terms and conditions and to the same extent that such proceeding, petition, or application could have been discontinued or modified if this title had not been enacted.

(2) The Administrator is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) of the Agency.

(c) Except as provided in subsection (e)—

(1) the provisions of this title shall not affect actions commenced prior to the date this title takes effect, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered, in the same

manner and with the same effect as if this title had not been enacted.

(d) No action or other proceeding commenced by or against any individual in the official capacity of such individual as an officer of the Nuclear Regulatory Commission shall abate by reason of the enactment of this title. No cause of action commenced by or against the Nuclear Regulatory Commission or functions transferred under this title shall abate by reason of the enactment of this title.

(e) If, before the date on which this title takes effect, the Nuclear Regulatory Commission, or any officer thereof in the official capacity of such officer, is a party to an action under this title, such action shall be continued with the Administrator or other appropriate official of the Agency, as the case may be, substituted or added as a party.

(f) Orders and actions of the Administrator in the exercise of the functions transferred under this title shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Nuclear Regulatory Commission in exercising such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, actions upon the record, or administrative review that apply to the exercise of such functions transferred under this title shall apply to the exercise of such functions by the Administrator.

REFERENCE

SEC. 110. With respect to any function transferred under this title and exercised after the effective date of this title, any reference in any other Federal law, Executive Order, rule, regulation, certificate, directive, instruction, delegation of authority, or other official document in force on the effective date of this title of or pertaining to the Nuclear Regulatory Commission shall be deemed to refer and apply to the Agency. After consultation with the appropriate committees of the Congress, the Administrator shall prepare and submit to the Congress proposed legislation containing technical and conforming amendments to title 42, United States Code, and to other provisions of law to reflect the changes made by this title. Such legislation shall be submitted not later than six months after the effective date of this title.

CONFORMING CHANGES

SEC. 111. Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.) is amended by—

(a) striking the phrase "a Director" wherever that phrase appears and inserting in lieu thereof "an Assistant Administrator";

(b) striking the phrase "the Director" wherever that phrase appears and inserting in lieu thereof "the Assistant Administrator"; and

(c) striking the phrase ", as provided in section 209," wherever that phrase appears.

CONSTRUCTION AUTHORIZATION FOR NUCLEAR WASTE REPOSITORY

SEC. 112. Section 191 of the Atomic Energy Act of 1954, as amended, is amended by adding a new subsection (c), as follows:

"(c)(1) Upon the receipt of an application for a construction authorization pursuant to section 10134(b) of title 42, United States Code, the Administrator shall establish one or more licensing boards for the conduct of any formal adjudicatory proceedings that may be requested on such application. Each board shall be comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall be appointed from among persons nominated by the Nuclear Waste Technical Review Board in accordance with paragraph (2). Members of the Board shall be appointed for such length of time as may be necessary to consider and act upon such application.

"(2) The Nuclear Waste Technical Review Board shall, not later than sixty days after the date on which the recommendation of site designation becomes effective under section 10135 of title 42, United States Code, nominate not less than six persons for appointment to the initial licensing board established pursuant to paragraph (1). Each person nominated for appointment to the Board shall have such technical or other qualifications as the Nuclear Waste Technical Review

Board deems appropriate to the issues to be decided in consideration of an application for a construction authorization.

"(3) If a board member becomes unavailable or is recused after appointment, or if the Administrator determines that proceedings before more than one board become necessary to complete the proceedings in a timely manner, additional members or additional boards shall be appointed in the same manner provided for the appointment of the initial member of board. For the purpose of appointing members required to be nominated by the Nuclear Waste Technical Review Board, the Administrator may, as appropriate, either appoint from among those initially nominated or shall request the Nuclear Waste Technical Review Board to nominate one or more additional groups of six persons.

"(4) Upon the issuance of an initial decision by the licensing board on an application for a construction authorization, the Administrator may either affirm the decision in whole or in part, or set aside, remand, or reverse any action, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or unsupported by substantial evidence.".

Subtitle B—Office of Investigations

SEC. 121. (a) Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.) is amended by adding a new section 205A, as follows:

"OFFICE OF INVESTIGATIONS

"SEC. 205A. (a) There is hereby established in the Agency an Office of Investigations under the direction of an Assistant Administrator for Investigations, who shall be appointed by the Administrator, who shall report directly to the Administrator and who shall serve at the pleasure of and be removable by the Administrator.

"(b) Subject to the provisions of this Act, the Assistant Administrator for Investigations shall perform such functions as the Administrator shall designate, including investigations into possible violations of the Atomic Energy Act, the Energy Reorganization Act, or any other statutes that the Administrator is responsible for implementing, and rules, regulations, orders, and license conditions issued by the Agency thereunder, that may involve intent or purpose to commit such violation, or that may have arisen as a result of careless disregard, deception, or other indications of willful intent.

"(c)(1) The Assistant Administrator for Investigations may initiate an investigation at the request of the Administrator, Deputy Administrator, or a Regional Administrator.

"(2)(A) The Assistant Administrator may initiate an investigation on his or her own initiative. The Administrator may prohibit the Assistant Administrator from conducting investigative activities, after the Assistant Administrator has decided to initiate, carry out, or complete an investigation, if

the Administrator determines specifically with respect to such investigation that such prohibition is necessary to protect the public health and safety or the common defense and security.

"(B) If the Administrator exercises any power under subparagraph (A), the Assistant Administrator shall submit a statement concerning such exercise within thirty days to the Committee on Environment and Public Works of the Senate and the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives.

"(C) The Administrator shall, within thirty days after submission of a statement under subparagraph (B), transmit a statement of the reasons for the exercise of power under subparagraph (A) to the Committee on Environment and Public Works of the Senate and the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives."

"(d) Any employee of the Agency obtaining information concerning possible violations falling within the scope of authority of the Office of Investigations shall promptly provide such information to the Office of Investigations.

"(e) Whenever the Assistant Administrator for Investigations has reasonable grounds to believe that there has been a violation of Federal criminal law, the Assistant Administrator, after notifying the Administrator, shall report such viola-

tion to the Attorney General. Neither the Administrator nor any other employee of the Agency shall prevent or prohibit the Assistant Administrator from reporting such violations to the Attorney General.".

(b) Within ninety days from the date of enactment of this Act, the Commission and the Attorney General shall enter into a memorandum of understanding to—

(1) provide for the coordination of matters that could lead both to enforcement action by the Commission as well as criminal prosecution by the Attorney General;

(2) provide decision procedures and schedules with respect to action on matters referred to the Attorney General; and

(3) facilitate the exchange of information relating to matters within the respective jurisdiction of the Commission and the Department of Justice.

(c) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following: "Assistant Administrator for Investigations, Nuclear Safety Agency."

Subtitle C—Nuclear Reactor Safety Investigations Board

FINDINGS AND PURPOSE

SEC. 131. (a) The Congress finds that—

(1) there exists a potential for conflict of interest in the investigation of significant safety events arising out of activities licensed or otherwise regulated by the Nuclear Safety Agency, where the Agency's prior action or inaction may have been a partial contributor to the cause of such event;

(2) an independent organization for the investigation of such events will inspire greater public confidence in the investigatory process for such incidents; and

(3) the increased stature and enhanced visibility of the investigations conducted by such an independent organization, and the recommendations made as a result of such investigations, will help to ensure timely consideration and implementation of the recommendations of such an organization.

(b) The purpose of this subtitle is to establish a Nuclear Reactor Safety Investigations Board to—

(1) conduct independent investigations of significant safety events arising out of activities at production or utilization facilities licensed by the Agency under section 103 or 104 of the Atomic Energy Act of 1974 (42 U.S.C. 2133, 2134); and

(2) submit to the Administrator and to the Congress the results of any such investigation, including

any recommendations for actions to be taken by the Administrator to prevent the recurrence of such events.

NUCLEAR REACTOR SAFETY INVESTIGATIONS BOARD

SEC. 132. (a) There is hereby established within the Nuclear Safety Agency an independent board to be known as the Nuclear Reactor Safety Investigations Board (hereafter in this section referred to as the "Board").

(b) The Board shall consist of three members who shall be appointed by the President, by and with the advice and consent of the Senate. The members shall be appointed on the basis of technical qualification, professional standing, and demonstrated competence and knowledge relevant to the investigative functions of the Board. No more than two members of the Board shall be of the same political party. Not later than ninety days after the effective date of this title, the President shall submit such nominations for appointment to the Board. The President shall designate one member to serve as the Chairperson of the Board.

(c) The terms of office of members of the Board shall be three years, except as otherwise provided in this subparagraph. Of the three members first appointed to the Board, one shall serve for one year, one for two years, and one for three years. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his or her predecessor was appointed shall be appointed for the remainder of the term. Upon the expiration of

his or her term of office, a member shall continue to serve until his or her successor is appointed and shall have qualified. Any member of the Board may be removed by the Residents for inefficiency, neglect of duty, or malfeasance of office.

(d)(1) The Chairperson shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board with respect to the appointment and supervision of personnel employed by the Board, the distribution of business among such personnel and among administrative units of the Board, and the use and expenditure of funds.

(2) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following: "Chairperson, Nuclear Reactor Safety Investigations Board.".

SEC. 133. The Board shall have the following functions and authorities:

(a)(1) The Board may investigate or cause to be investigated any significant safety event, as defined in paragraph (5) of this subsection, arising out of activities at production or utilization facilities licensed by the Agency under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134). The Board may also investigate or cause to be investigated

other safety events upon the request of the Administrator.

(2) The purpose of any investigation initiated pursuant to this subsection shall be to determine the facts, conditions, and circumstances of the significant safety events investigated, including—

(A) an assessment of the implications of such event for public health and safety;

(B) a determination of whether such event is part of a pattern of similar events at production or utilization facilities licensed by the Agency under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) which could adversely affect the public health or safety; and

(C) an assessment of the root causes of such event, including the contribution, if any, of the actions of the Agency to such event.

(3) The Board shall report in writing, and shall submit such report to the Administrator, on the facts, conditions, and circumstances of each event investigated pursuant to this subsection, including—

(A) the date and place of the event;

(B) the nature and probable consequence of the event;

(C) the cause or causes of the event; and

(D) any action recommended to prevent the recurrence of the event, including any recommendations for actions to be taken by the Agency with regard to regulatory requirements or practices.

(4)(A) The Administrator shall respond in writing to any recommendations of the Board within one hundred and twenty days of receipt of such recommendations. Such written response shall detail specific measures adopted or to be adopted by the Administrator in response to such recommendations, and explanations for the Administrator's inaction on any recommendations not adopted.

(B) The recommendations of the Board made pursuant to paragraph (3) and the response of the Administrator to such recommendations shall be made available to the public and shall be submitted to Congress.

(5) For the purpose of this subtitle, a "significant safety event" shall be defined as an event that involves—

(A) a moderate exposure to, or release of, radioactive material from a production or utilization facility licensed by the Agency under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134);

(B) a major degradation of essential safety-related equipment at a production or utilization facility licensed by the Agency under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134); or

(C) a major deficiency in the design, construction, use of, or management controls for a production or utilization facility licensed by the Agency under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134).

(6) Except for investigations initiated at the request of the Administrator, the Board shall, prior to the initiation of an investigation pursuant to this section, consult with the Administrator and, if the Board determines that an investigation is warranted, the Board shall set forth in writing the basis for the Board's determination that the event constitutes a significant safety event, as defined in paragraph (5). The written statement of the Board's basis for initiating an investigation shall not be subject to judicial review. The written statement shall be made available to the public and shall be submitted to Congress.

(7) No part of the conclusions, findings, or recommendations of any report of the Board relating to any event or the investigation of such event shall be admit-

ted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report.

(b) Following the issuance of a written determination pursuant to paragraph (a)(6) of this section, or upon the initiation of an investigation requested by the Administrator, any employee of the Board, upon presenting appropriate credentials, including any security clearance required by the Administrator, and a written notice of inspection authority, may enter the facility where the event has occurred and do all things appropriate for a proper investigation. The employee may inspect and copy records, files, and documents, including licensee records, files, and documents at locations other than the facility where the event occurred, and may inspect processes, controls, and facilities relevant to the investigation of such event.

(c) Subject to section 552a of title 5, United States Code, the Board may secure directly from any agency or instrumentality of the United States such information as that agency or instrumentality may already possess as may be necessary to enable the Board to carry out an investigation pursuant to this subtitle. Upon request of the Board, the head of such agency or instrumentality shall furnish such information to the

Board. The information which the Board may secure under this subsection may include any material designated as classified material pursuant to the Atomic Energy Act of 1954, or any materials designated as safeguards information and otherwise protected from disclosure under section 147 of the Atomic Energy Act of 1954.

(d)(1) Following the issuance of a written determination pursuant to paragraph (a)(6) of this section, or upon the initiation of an investigation requested by the Administrator, the Board or, upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may, for the purpose of carrying out this subtitle, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence as the Board or such officer or employee deems advisable. Subpoenas shall be issued only under the signature of a Board member, upon authorization by the Board, and may be served by any person designated by the Board.

(2) Any person who willfully neglects or refuses to qualify as a witness, or to testify, or to produce any

evidence in obedience to any subpoena duly issued under the authority of this paragraph shall be fined not more than $5,000, or imprisoned for not more than six months, or both. Upon certification by the Board of the facts concerning any willful disobedience by any person to the United States Attorney for any judicial district in which the person resides or is found, the Attorney may proceed by information for the prosecution of the person for the offense.

(3) Where the Board discovers information during the course of its investigation involving matters within the jurisdiction of the Agency's Inspector General or the Assistant Administrator for Investigations, such information shall be forwarded promptly, as appropriate, directly to the Inspector General or concurrently to the Administrator and the Assistant Administrator for Investigations.

(e)(1) Subject to such rules as may be prescribed by the Board, the Board may appoint and fix the pay of such officers and employees (including investigators and attorneys) as the Board considers necessary to carry out the powers and duties of the Board. Appointments shall be made under this paragraph in such manner that not more than the equivalent of fifty-five

full-time officers and employees are employed by the Board at any time.

(2) Employees of the Board shall be selected, appointed, employed, and compensated pursuant to section 161 d. of the Atomic Energy Act of 1954, as amended.

(f) Subject to such rules as may be prescribed by the Board, the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for grade GS–18 of the General Schedule. The amount of consultant services which may be obtained by the Board under this subsection shall not exceed, during any fiscal year period, the amount of services which would be obtained if the Board procured on a full-time basis the services of twelve consultants.

(g)(1) Upon request of the Board, the Administrator or the head (or governing authority) of any other Federal agency or instrumentality may—

(A) detail to the Board, on a reimbursable basis, such personnel as may be desirable to assist the Board in carrying out its duties; and

(B) make available to the Board, on a reimbursable basis, such facilities, equipment, or other administrative support services as may be desirable to assist the Board in carrying out its duties.

(2) The Administrator shall provide the Board with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of the Board and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(h) The Board may confer with employees of State or local government agencies and may use, on a reimbursable basis, such services, records, and facilities as such agencies may make available to the Board.

(i) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(j) The Board shall report annually to the Congress on the activities of the Board. Such report shall contain—

(1) a summary of the significant safety events investigated by the Board during the preceding calendar year; and

(2) a summary, in such detail as the Board deems advisable, of the recommendations made by the Board pursuant to subparagraph (a)(3)(D) of this section, together with the observed response of the Administrator to each such recommendation.

Such reports shall be made available to Federal, State, and local government agencies concerned with safety at production or utilization facilities licensed by the Agency under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134). Upon request, such reports shall be made available to other interested persons.

(k) The Board is authorized to establish rules, procedures, or other appropriate guidance governing the operations of the Board and the conduct of Board investigations.

SEC. 134. There shall be transferred to the Board such offices of the Agency, or functions, powers, or duties of such offices, as the Administrator may determine are properly related to the functions of the Board and will further the purposes of this Act, except that there shall not be transferred to the Board any program operating responsibilities.

SEC. 135. (a) There are hereby authorized to be appropriated for each of the fiscal years 1989, 1990, 1991, 1992, 1993, and 1994 the sum of $5,500,000.

(b) The Board shall terminate at the end of fiscal year 1994.

Subtitle D—Separability

SEC. 141. If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Subtitle E—Effective Date

SEC. 151. This title and the amendments made by this title shall take effect on such date during the six-month period beginning on July 21, 1989, as the President may direct in an Executive order. If the President fails to issue an Executive order for the purpose of this section, this title and such amendments shall take effect on January 21, 1990.

TITLE II—MISCELLANEOUS PROVISIONS

NOTIFICATION REQUIREMENTS FOR NONCOMPLIANCE

SEC. 201. Section 206 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5846), is amended to read as follows:

"NONCOMPLIANCE

"SEC. 206. (a) Any firm constructing, owning, operating, or supplying the components of any facility or activity

which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or pursuant to this Act, and any individual director or responsible officer of such a firm, obtaining information reasonably indicating that such facility or activity or basic components supplied to such facility or activity—

"(1) fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Agency relating to substantial safety hazards, or

"(2) contains a defect which could create a substantial safety hazard, as defined by regulations which the Agency shall promulgate,

shall immediately notify the Agency of such failure to comply, or of such defect, unless such firm or individual has actual knowledge that the Agency has been adequately informed of such defect or failure to comply.

"(b) The Administrator is authorized to issue such regulations and orders as may be necessary to ensure compliance with this section, including regulations and orders requiring any firm subject to this section to devise and implement procedures to identify, evaluate, and report defects.

"(c) Any firm or individual who violates any regulation or order issued under subsection (b) of this section shall be subject to a civil penalty in the same manner and amount as

for violations subject to a civil penalty under section 234 of the Atomic Energy Act of 1954, as amended.

"(d) The requirements of this section shall be prominently posted on the premises of any firm subject to this section.

"(e) The Agency is authorized to conduct such reasonable inspections, investigations, and other enforcement activities as needed to ensure compliance with the provisions of this section and with any regulations and orders issued thereunder.

"(f) For purposes of this section, the term 'firm' shall have the meaning provided for the term 'person' in subsection 11 s. of the Atomic Energy Act of 1954, as amended, except that it shall include the Department of Energy to the extent that its facilities, materials, or activities are licensed by the Agency and shall not include an 'individual.' ".

DISCLOSURE OF SECURITY-RELATED SAFEGUARDS INFORMATION

SEC. 202. Section 147 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2167), is amended by inserting the following language in subsection a. before the sentence that begins "The Commission shall exercise the authority": "Paragraphs (1), (2), and (3) of this subsection shall include safeguards information contained in generic studies, reports, and analyses that would provide substantial assistance in compromising or negating any of a licensee's specific security

measures or procedures to protect nuclear material or facilities, as described in subparagraphs (1), (2), and (3) of this subsection, or in targeting a licensee's vital plant equipment as described in subparagraph (3) of this subsection.".

STORAGE AND DISPOSAL OF GREATER-THAN-CLASS-C LOW-LEVEL WASTE

SEC. 203. (a) Subject to the requirements and limitations of this section, the Secretary is authorized to accept for storage low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Agency for Class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, that is owned or generated under license or regulation of the Agency (or an Agreement State): *Provided, however,* That no such waste shall be accepted by the Secretary until the Secretary submits to Congress a comprehensive report setting forth—

(1) the options for the permanent disposal of such waste and a discussion of the actions that the Secretary intends to take to implement the preferred disposal option; and

(2) the options for ensuring that the beneficiaries of the activities resulting in the generation of such waste bear all reasonable costs of the storage and disposal of such waste and a discussion of the actions that

the Secretary intends to take to implement the preferred cost recovery option.

(b) Low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Agency for Class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, that is owned or generated under license or regulation of the Agency (or an Agreement State) shall, except as otherwise provided in subsections (c) and (d), be stored or disposed of only in a facility that is licensed by the Agency (or an Agreement State). Any storage or disposal facility for such waste that is operated by the Federal Government shall be licensed only by the Agency.

(c) Prior to the issuance of a license for a storage facility, the Agency may permit the transfer to the Secretary for storage of low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Agency for Class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, that is owned or generated under license or regulation of the Agency (or an Agreement State), if the Agency determines in writing that such transfer is necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security.

(d)(1) Nothing in this section shall be deemed to apply to or otherwise affect any contractual obligation of the Secretary entered into on or before June 9, 1988, pursuant to which the Secretary is required to accept low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Agency for Class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, that is owned or generated under license or regulation of the Agency (or an Agreement State).

(2) Nothing in this section shall be deemed to alter, amend, or otherwise apply to the activities of the Secretary pursuant to the West Valley Demonstration Project Act (42 U.S.C. 2021a et seq.).

(3) Nothing in this section shall be deemed to alter, amend, or otherwise apply to the activities of the Secretary specifically authorized pursuant to the Memorandum of Understanding between the United States Nuclear Regulatory Commission and the United States Department of Energy Concerning the Removal and Disposition of Solid Nuclear Wastes from Cleanup of the Three Mile Island Unit 2 Nuclear Plant (46 Federal Register 38614, July 28, 1981), as amended by the Memorandum of Understanding between the United States Nuclear Regulatory Commission and the United States Department of Energy Concerning the Remov-

al and Disposition of Solid Nuclear Wastes from Cleanup of the Three Mile Island Unit 2 Nuclear Plant (47 Federal Register 16229, April 15, 1982).

(4) Nothing in this section shall be deemed to alter, amend, or otherwise apply to the activities of the Secretary pursuant to the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C 10101 et seq.).

(5) Nothing in this section shall be deemed to alter, amend, or otherwise affect the responsibility of States or compacts pursuant to the Low Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b et seq.).

(6) Nothing in this section shall be deemed to alter, amend, or otherwise apply to low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Agency for Class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983, that is owned or generated under license or regulation of the Agency (or an Agreement State) and that is classified for national security purposes pursuant to the Atomic Energy Act of 1954, as amended.

QUARTERLY REPORT ON IMPLEMENTATION OF THE NUCLEAR WASTE POLICY ACT

SEC. 204. The Administrator shall submit to the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives

and the Committee on Environment and Public Works of the Senate each quarter a report on the status of the Agency's implementation of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 et seq.). Such report shall include a detailed summary of—

(a) the activities of the Agency during such quarter;

(b) the funds expended during such quarter;

(c) all interactions with the Department of Energy with regard to implementation of the Act, including Agency communications, recommendations, and other activities regarding the development of a repository pursuant to title I of such Act; and

(d) the technical issues that relate to the licensability of any candidate site under consideration for development as a repository and any activities undertaken by the Agency during such quarter with respect to such issues.

WEST CHICAGO THORIUM TAILINGS SITE

SEC. 205. The Nuclear Safety Agency may not designate a permanent disposal site for low-level nuclear wastes at Ann and Factory Streets in West Chicago, Illinois, until the Agency has studied alternative sites to determine the safest site available to store such wastes.

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